

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
of the Russell City Energy)	01-AFC-7
Center)	
_____)	

CITY HALL
COUNCIL CHAMBERS
777 B STREET
HAYWARD, CALIFORNIA

THURSDAY, JUNE 20, 2002

9:08 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Michael Smith, Advisor

Ellen Townsend-Huff, Advisor

STAFF and CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Jack Caswell, Project Manager

David Flores

Alvin Greenberg

Brewster Birdsall

Mike Ringer

Eric Knight

Gabriel Behymer

Stuart Itoga

Daniel Gorfain

Joe Crea

Ajoy Cuha

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Greggory L. Wheatland, Attorney,
Jeffery D. Harris, Attorney
Ellison, Schneider and Harris, LLP

James R. Leahy, Development Manager
Calpine Corporation

Thomas Priestley

Gregory Darwin

Brett Hartman

Daniel Wood

Ameneli Amirali

INTERVENORS

Larry Tong, Interagency Planning Manager
East Bay Regional Park District

Peter M. Rehon, Attorney
Rehon and Roberts
Arthur E. Gimmy
Parker Ventures, LLC

ALSO PRESENT

Jesfs Armas, City Manager
City of Hayward

Robert Nishimura
Bay Area Air Quality Management District

Johan Galleberg, Grid Planning Engineer
California Independent System Operator

Joseph Hilson, Council Member
City of Hayward City Council
Chairperson, HASPA

Audre LePell

Janice DelFino

Hayward Area Shoreline Planning Agency (HASPA)

ALSO PRESENT

Barbara George
Women's Energy Matters

Sheila G. Junge

Howard Beckman

Viola Saima-Barklow

Doug Sprague

Frank DelFino

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P R O C E E D I N G S

9:08 a.m.

HEARING OFFICER FAY: Good morning.

This is evidentiary hearing for the application for certification of the Russell City Energy Center, docket number 01-AFC-7.

I am Gary Fay, the Hearing Officer for this case. To my left is Energy Commission Chairman William Keese. I understand that Mike Smith and Ellie Townsend Huff will be joining us shortly. They are both Advisors to the Commissioners on the Committee. The Committee is made up of Chairman Keese and Commissioner Robert Pernell.

And at this time I'd like to take introductions. Begin with the applicant, Mr. Wheatland.

MR. WHEATLAND: Good morning; I'm Gregg Wheatland. I'm the attorney for the applicant.

MR. LEAHY: Good morning; I'm Jim Leahy, Calpine's Development Manager for the Russell City Energy Center.

HEARING OFFICER FAY: And the staff?

MR. RATLIFF: Dick Ratliff, Counsel for Staff.

1 MR. CASWELL: Jack Caswell, Project
2 Manager for the California Energy Commission.

3 HEARING OFFICER FAY: All right. Are
4 any intervenors represented here?

5 MR. TONG: Yes, Larry Tong, East Bay
6 Regional Park District.

7 HEARING OFFICER FAY: Thank you. Any
8 others? All right, I believe we're going to have
9 an appearance later from a representative of the
10 Parker Ventures, which is also an intervenor.

11 And now I'd like to ask the Public
12 Adviser to explain for any members of the public
13 who may be present, just how they can participate
14 in today's hearing.

15 MS. MENDONCA: Thank you, Mr. Fay.
16 Chairman Keese and members of the public, my name
17 is Roberta Mendonca, and I'm the Energy
18 Commission's Public Adviser.

19 Today's hearings will be run according
20 to an agenda which is available on the sign-in
21 table. I have blue cards which we would ask you
22 to please fill out. I'll collect and make sure
23 that the Hearing Officer has your blue card.
24 Public comment will be taken at the conclusion of
25 each topic. So if you want to talk about project

1 description, please let us know that; if you want
2 to talk about air, please let us know that.

3 Also on the sign-in table is a one-page
4 summary of what will be happening through the
5 formal hearings today; the fact that we're here to
6 establish a formal evidentiary record. And that
7 disputed facts will be resolved today. And my
8 office will, of course, be of additional
9 assistance should you want documents or other
10 information about how to participate today and in
11 the rest of the process for the Russell case.

12 Thank you very much.

13 HEARING OFFICER FAY: Thank you, Ms.
14 Mendonca.

15 The agenda for today is entitled topic
16 and witness list for the Russell City Energy
17 Center project. And there's a pile of them out
18 there on the front table. And this is basically
19 the order that we'll be proceeding, although we
20 intend to go first with the applicant and then the
21 staff. But it lists topics in order, and the
22 witnesses that we expect to hear from today.

23 We're addressing the simpler topics
24 first, the ones that are of less contention or no
25 contention. And later we'll get into topics that

1 do have some disagreement between the parties. So
2 things will appear to be going very rapidly this
3 morning.

4 However, I want to emphasize that after
5 each topic area the public has an opportunity to
6 comment on that topic area. If you would, though,
7 focus your comments and hold them until we get to
8 that topic. That would be most helpful to us so
9 that we can be sure to give your comment the
10 greatest weight possible, since we do deal with
11 these matters topic by topic.

12 The Committee noticed the hearings for
13 today and tomorrow, as well, if needed, in a
14 notice and order issued on May 22nd of this year.
15 That document also contained the dates for filing
16 testimony by the parties, which was June 10, 2002.

17 The purpose of these formal evidentiary
18 hearings is to establish the factual record
19 necessary to create a decision in this case. This
20 is done through the taking of written and oral
21 testimony, as well as through exhibits offered by
22 the parties.

23 These hearings are more structured than
24 the Committee conferences and the informal staff
25 workshops which have already taken place.

1 A party sponsoring a witness shall
2 briefly establish the witness' qualifications and
3 have the witness orally summarize the prepared
4 testimony before requesting that the testimony be
5 moved into evidence. Relevant exhibits may be
6 offered into evidence at that time, as well.

7 At the conclusion of a witness' direct
8 testimony the Committee will provide the other
9 parties an opportunity for cross-examination,
10 followed by redirect and recross-examination as
11 appropriate.

12 At the conclusion of each topic area we
13 will provide an opportunity for public comment on
14 that topic.

15 The parties are encouraged to
16 consolidate presentations by witnesses and/or
17 cross-examination to the greatest extent possible
18 in order to minimize duplication and to conserve
19 hearing time.

20 A party sponsoring multiple witnesses on
21 a topic area should have those witnesses testify
22 as a panel.

23 However, if there is little or no
24 dispute among the parties regarding a particular
25 topic, the Committee will, in the interest of

1 saving time, dispense with recitation of witness
2 qualifications, and ask for a much abbreviated
3 summary of the topic. In such undisputed areas
4 that testimony may be submitted with a declaration
5 signed by the witness in lieu of a personal
6 appearance.

7 The project manager for the party
8 offering the testimony can often answer general
9 questions regarding those topics.

10 Before we wade in, I'd like to point out
11 a few things to assist in efficiently conducting
12 these hearings. Please realize that unless you
13 have prefiled testimony for your witnesses, as
14 directed in the hearing order, you will no be
15 allowed to have the witness testify.

16 Don't be repetitive in asking questions.
17 Several different parties interested in the same
18 matter should consolidate their presentations or
19 questioning where possible.

20 Questioning must be limited to relevant
21 matters within the scope of the witness'
22 testimony. Please do not argue with the witness.
23 Don't testify while cross-examining a witness;
24 it's the time to ask questions only.

25 When asking a question refer to a

1 specific page of the witness' testimony and/or
2 exhibit. And direct testimony must be of matters
3 within the witness' personal knowledge.

4 There are different rules for witnesses
5 who qualify as experts. Experts, by virtue of
6 their education and experience, are allowed to
7 render expert opinion based on studies, reports,
8 et cetera.

9 I see that Ms. Townsend-Huff is here, on
10 my right. And Mr. Smith, to my far left, joined
11 us.

12 And so now I'd like to ask if there's
13 any preliminary matters before we begin with the
14 presentation of testimony? Ms. Mendonca, did you
15 have something further? Anything from the
16 parties?

17 I think we do have a motion to strike
18 that's been filed, and I think we'll hold that off
19 until the topic of socioeconomic comes up.

20 Okay, we have a request for somebody who
21 wants to intervene in the proceeding. And our
22 process instructed people at the very beginning
23 how to intervene. And the timeframe for
24 intervention was prior to the evidentiary
25 hearings. Obviously that's past.

1 However, --

2 MS. GEORGE: No, the evidentiary
3 hearings have not started yet.

4 HEARING OFFICER FAY: Well, --

5 MS. GEORGE: This is the beginning of
6 it. I have been trying to find out since February
7 in --

8 HEARING OFFICER FAY: Just a moment,
9 ma'am. Just a moment. Let me explain how things
10 will work.

11 MS. GEORGE: I've been trying to find
12 out since February whether --

13 HEARING OFFICER FAY: We'd be glad to
14 take --

15 MS. GEORGE: -- I could intervene, and
16 when the deadline was. And nobody at the Energy
17 Commission has been able to give me information on
18 that matter. Although obviously, between February
19 and now, it would have been possible to intervene.
20 Therefore, I ask to intervene now. And I ask for
21 an extension of time.

22 HEARING OFFICER FAY: Okay. We'll
23 certainly take your comments on the record today.
24 And if you can give me some idea of what topic
25 they would best come under, then I could be sure

1 that you know about when you'll be scheduled in
2 the proceeding.

3 I haven't had a chance to look at your
4 remarks --

5 MS. GEORGE: We are asking for two
6 months to prepare for our testimony in the
7 proceeding because we have not been able to get
8 any pertinent information on whether or not we
9 could intervene. Therefore, we have not been able
10 to prepare the testimony.

11 HEARING OFFICER FAY: Okay, and you are
12 Ms. George?

13 MS. GEORGE: Yes, I am Ms. George.

14 HEARING OFFICER FAY: Okay, why don't we
15 do this, --

16 MS. GEORGE: I understand that I need to
17 be here in order to have this recorded. I want
18 this recorded.

19 HEARING OFFICER FAY: Right.

20 MS. GEORGE: I appear today to --

21 HEARING OFFICER FAY: Just a moment, Ms.
22 George, let me explain.

23 We're going to hear your argument at
24 this time as to why you think you should be
25 allowed late intervention. And why there should

1 be a delay in the process to accommodate your
2 preparation. And so we won't rule on that until
3 after we've heard your argument.

4 So, this is a good time to make that
5 argument, not so much on the substance of your
6 comments, but as to why the process should be held
7 up to allow your participation as an intervenor.

8 MS. GEORGE: Starting, I believe, in
9 February, but it actually might have been as early
10 as January, Women's Energy Matters has made
11 several phone calls and visits to the California
12 Energy Commission personnel and the Public Adviser
13 at the Energy Commission to ask whether it was
14 still possible to intervene in this proceeding.

15 We looked at the website. There was no
16 information as to the schedule of the proceedings;
17 no information as to whether it was possible to
18 intervene. And at the Energy Commission the
19 personnel that we consulted, including the Public
20 Adviser's Office, and including the people who are
21 close to the Commissioners, everyone said that
22 they did not know whether it was still possible to
23 intervene, but they thought that it was not.

24 That's the information we kept getting
25 every time we called. I asked to be placed on the

1 mailing list. I discovered whenever it was, a
2 month ago or less, that there was an extension for
3 the applicant to make it a 12-month process
4 instead of a six-month process. That was granted.

5 We see no reason why Women's Energy
6 Matters should not receive the same courtesy that
7 the applicant has received for an extension of
8 time.

9 We also believe that the original
10 designation of this proceeding as a six-month
11 proceeding was done improperly. That there was no
12 such emergency to make it a six-months proceeding.
13 And it should have been a 12-months proceeding
14 from the beginning.

15 There's evidence that the Energy
16 Commission has not been forthcoming with the
17 community as far as letting people know what was
18 necessary and possible in order to intervene. And
19 therefore, we are at the awkward and unfortunate
20 position of having to come in at this very late
21 date, because this is the first time that we were
22 able to talk to someone who actually knew whether
23 or not it was possible.

24 And I hope that you will determine that
25 we can intervene in this process. We are not

1 asking to stop these evidentiary hearings; they
2 can go forward. But we ask for a two-month
3 extension for Women's Energy Matters to prepare
4 our testimony and to present it at extended
5 evidentiary hearing in two months.

6 PRESIDING MEMBER KEESE: But you
7 indicate you were aware of this proceeding in
8 January?

9 MS. GEORGE: Yes, I was aware of this --

10 PRESIDING MEMBER KEESE: The Energy
11 Commission does an extensive outreach in the
12 community. And we've had quite a bit of community
13 involvement in this case --

14 MS. GEORGE: I was told that there was
15 only one --

16 PRESIDING MEMBER KEESE: -- previously.

17 MS. GEORGE: -- intervenor in this case.
18 I have tried to contact that intervenor and was
19 not able to get any response from them.

20 HEARING OFFICER FAY: Actually there are
21 several intervenors.

22 MS. GEORGE: That may be true at this
23 time, but when I first asked there was only one
24 that the Public Adviser informed me about anyway.
25 There may be have been others, but that was --

1 HEARING OFFICER FAY: Have you reviewed
2 our website for information on how to --

3 MS. GEORGE: I have reviewed your
4 website.

5 HEARING OFFICER FAY: -- participate --

6 MS. GEORGE: I was not able to get the
7 information on your website. I couldn't look at
8 it every day, but when I did look at it it wasn't
9 available.

10 HEARING OFFICER FAY: Okay. The website
11 contains the initial notice of the site visit and
12 informational hearing, which includes information
13 about intervening --

14 MS. GEORGE: Well, I certainly was not
15 aware of it at that time. That was long ago.
16 That wasn't in January.

17 HEARING OFFICER FAY: But it remained
18 posted. I mean it was there for your review --

19 MS. GEORGE: What does that have to do
20 with this question about intervenor status?

21 HEARING OFFICER FAY: Well, --

22 MS. GEORGE: You don't have to --

23 HEARING OFFICER FAY: -- the matter
24 is --

25 MS. GEORGE: You don't have to apply

1 before the site visit.

2 HEARING OFFICER FAY: No, of course not.

3 But that information was available since that time
4 as to how to intervene in the process.

5 MS. GEORGE: But the deadline, the
6 crucial information about whether it was still
7 possible and worth the trouble for us to get the
8 people together to do the intervention was not
9 available.

10 And so therefore we ask now for an
11 extension of time because we have heard the only
12 vague thing that somebody said was it has to
13 happen before the evidentiary hearings. And so
14 that's why we're here at the beginning of the
15 evidentiary hearings, because this is the first
16 time --

17 PRESIDING MEMBER KEESE: Yes, because --

18 MS. GEORGE: -- we are able to talk to a
19 judge and someone who would definitively be able
20 to tell us whether it is possible for us to
21 intervene.

22 PRESIDING MEMBER KEESE: But if you
23 understand, even those parties who intervene who
24 have not filed testimony previous to the start of
25 this will not be coming forward. If there --

1 MS. GEORGE: That's why we're asking for
2 a --

3 PRESIDING MEMBER KEESE: -- is no filed
4 testimony --

5 MS. GEORGE: -- motion of extension of
6 time.

7 PRESIDING MEMBER KEESE: -- they will
8 not be cross-examining witnesses or bringing on
9 experts, which are the two, to take the shortcut,
10 those are the two issues.

11 As far as being able to comment --

12 MS. GEORGE: Well, then perhaps the
13 evidentiary hearing should be postponed all
14 together if we're going to be --

15 PRESIDING MEMBER KEESE: As far as being
16 able to comment on the issues --

17 MS. GEORGE: -- deprived of our right to
18 cross-examine witnesses.

19 HEARING OFFICER FAY: Ma'am, you need to
20 stop when someone else is talking because the
21 transcript will not pick up what you want
22 recorded.

23 PRESIDING MEMBER KEESE: You will be
24 able to comment on each of the issues as we go
25 through the process, whether you're an intervenor

1 or not.

2 MS. GEORGE: I want intervenor status.

3 HEARING OFFICER FAY: Are you aware that
4 we will be taking public comment, and we do
5 consider public comment. And while we cannot base
6 a finding solely on public comment, it certainly
7 can be used to buttress or corroborate other
8 evidence in the record.

9 So that certainly is a way to
10 participate. Intervening is not the only way to
11 participate in our process.

12 MS. GEORGE: We're interested in
13 intervenor status. That enables us to do things
14 which we cannot do as a public comment.

15 HEARING OFFICER FAY: Okay.

16 (Pause.)

17 HEARING OFFICER FAY: I've consulted
18 with the Commissioner on this, and since your
19 request for intervention comes the day of the
20 evidentiary hearing, it is untimely. And you've
21 not presented any overriding reason why we should
22 make an exception in this case, and to hold up the
23 evidentiary record to receive your presentation.

24 So your request for intervention status
25 is denied.

1 However, your group will be certainly
2 afforded time to make comments on the record here
3 today. And you will be able, at any time, to
4 submit written comments.

5 We will have a comment period on the
6 proposed decision, and it would be a 30-day
7 comment period, so you will be able to comment on
8 the specific language that the Committee has
9 proposed.

10 We will also have a Committee conference
11 here in Hayward about the time of the 30-day
12 comment period is closing, or perhaps a few days
13 before that closes, so people can come in and
14 orally comment.

15 And then when the full Commission
16 considers the proposed decision in Sacramento
17 you'll be able to address the full Commission, as
18 well, at that time.

19 And all of those are perfectly
20 acceptable ways to participate.

21 MS. GEORGE: Can you tell me what is the
22 process to protest or challenge your denial of the
23 intervenor status?

24 HEARING OFFICER FAY: It would be an
25 appeal to the full Commission.

1 MS. GEORGE: An appeal to the full
2 Commission?

3 HEARING OFFICER FAY: Yes.

4 MS. GEORGE: Is there a deadline on
5 that?

6 HEARING OFFICER FAY: Well, I'd
7 recommend that you file the appeal within ten
8 days.

9 PRESIDING MEMBER KEESE: This whole
10 issue of intervening is Ms. Mendonca's
11 responsibility on behalf of you. So, I would
12 suggest you could talk to Ms. Mendonca and she can
13 give you --

14 MS. GEORGE: I have been talking to the
15 Public Adviser's Office since I first called in
16 February.

17 PRESIDING MEMBER KEESE: Well, she's
18 here and she can tell you exactly what the rules
19 for appealing the decision are.

20 MS. GEORGE: All right.

21 HEARING OFFICER FAY: But in the
22 meantime, you know, to not prejudge any aspect of
23 your appeal, I'd encourage you to comment on any
24 aspect of the case today that --

25 MS. GEORGE: As I said, we need two

1 months to prepare. We may make comments, but they
2 would be not based on our full preparation.

3 HEARING OFFICER FAY: Okay. Thank you.
4 Any other preliminary matters then before we
5 begin?

6 MR. ARMAS: Mr. Fay.

7 HEARING OFFICER FAY: Yes.

8 MR. ARMAS: Jesus Armas with the City of
9 Hayward. Just a couple of remarks procedurally,
10 not on the substance.

11 First of all, welcome to the Commission,
12 again. These proceedings are being CableCast, so
13 it is our request that if the speakers are
14 addressing you or you are speaking, that you turn
15 on the additional microphone so that the viewing
16 audience can also listen to the remarks. And I'll
17 assist the other Commissioners in a few moments
18 just to show them how that part of the dais works.

19 And as I indicated, it is on cable
20 channel, so that if people are speaking from the
21 rear of the room or away from these microphones
22 the viewing audience if not able to enjoy that
23 testimony. So we do urge that speakers could step
24 forward.

25 HEARING OFFICER FAY: Thank you. Okay,

1 we'd like to begin then. And, Mr. Wheatland,
2 we're going to start, as per our agenda today,
3 with project description. Would you like the
4 staff to lead on that, or shall we do as we
5 usually do, just start with the applicant?

6 MR. WHEATLAND: On project description?

7 HEARING OFFICER FAY: Yes.

8 MR. WHEATLAND: I think since we have
9 the FSA, and that's the document that we'll be
10 working off of primarily today, it would be best
11 to have the staff lead with the description in the
12 FSA, if that would be all right.

13 HEARING OFFICER FAY: That's fine. So,
14 Mr. Caswell, are you the witness on that?

15 MR. CASWELL: Yes.

16 HEARING OFFICER FAY: All right.

17 MR. CASWELL: I'm going to give you --

18 HEARING OFFICER FAY: Just a moment,
19 please. Will the court reporter please swear the
20 witness.

21 Whereupon,

22 JACK CASWELL

23 was called as a witness herein, and after first
24 having been duly sworn, was examined and testified
25 as follows:

1 DIRECT TESTIMONY

2 MR. CASWELL: I'm going to give a brief
3 project description and a brief explanation of the
4 timeframes that have changed slightly in this
5 project.

6 The Russell City Energy project is
7 proposed, and it says in the AFC, Calpine/Bechtel.
8 That has changed to Calpine Corporation only as
9 sole owner.

10 On May 22, 2001, the applicant, that's
11 Calpine, filed an application for certification
12 seeking approval from the Energy Commission to
13 review their project in the six-month review
14 process.

15 This project, Calpine has asked to
16 construct and operate a 600 megawatt, natural gas
17 fired, combined cycle electrical generating
18 facility.

19 On July 11th the Energy Commission found
20 that the application was data adequate. And at
21 that point the Energy Commission Staff started
22 their review analysis and discovery phase of that
23 process.

24 Also at that time the Energy Commission
25 Commissioners agreed to review this project in

1 that six-month criteria, under the six-month
2 criteria.

3 On April 15th the applicant filed a
4 request to the Committee to convert this six-month
5 process to a 12-month process review. And on
6 April 26th that was granted, again by the
7 Commission, the Committee.

8 On June 10th the Commission Staff,
9 that's myself and all the technical people
10 involved in this process, we produced the final
11 staff assessment. And that was produced on June
12 10th.

13 Now, in this process there were some
14 delays in that six-month review, and the reason
15 for that was that in the biological areas, air
16 quality and I believe those were the two main
17 areas that caused certain delays due to other
18 agencies outside the Energy Commission's review,
19 and their response to those reviews, as well as
20 workshops that were involved in that process. So
21 that's the reason from the six-month to the 12-
22 month process.

23 This final staff assessment is a final
24 document that has gathered information from those
25 workshops and other information that was provided

1 in a final document. And we are operating on the
2 basis today of this final staff assessment as the
3 Energy Commission Staff see it, as well as other
4 documents submitted by the applicant. And errata
5 to discuss their point of view on this final staff
6 assessment.

7 I think with that, that pretty much
8 covers what we're doing here today.

9 HEARING OFFICER FAY: All right. Mr.
10 Ratliff, is the staff introducing that part of the
11 FSA at this time for Mr. Caswell's testimony?

12 MR. RATLIFF: Yes, we expect to submit
13 that and the other portions by declaration.

14 HEARING OFFICER FAY: Okay.

15 MR. RATLIFF: With the exception of
16 certain identified areas that I think you're aware
17 of.

18 HEARING OFFICER FAY: Then let's mark
19 the Energy Commission's final staff assessment as
20 exhibit 1. And I'll ask you to move each section
21 at the time it's offered, if that's all right.
22 Exhibit 1 marked for identification, the final
23 staff assessment or FSA. All right.

24 Any cross-examination of Mr. Caswell by
25 any party? I see no indication.

1 Do you have a presentation, Mr.
2 Wheatland?

3 MR. WHEATLAND: No, we do not.

4 HEARING OFFICER FAY: Okay. Fine.

5 MR. HILSON: Mr. Fay?

6 HEARING OFFICER FAY: Yes.

7 MR. HILSON: I am Joe Hilson, Council
8 Member, City of Hayward. And would like to enter
9 a comment to the record from the Hayward Area
10 Shoreline Planning Agency, which I chair. And
11 under land use, it's a general topic, if that is
12 acceptable to you.

13 HEARING OFFICER FAY: Please go ahead.

14 MR. HILSON: First of all, welcome to
15 the City of Hayward, welcome to the Hayward City
16 Hall. We're appreciative that you've come here to
17 take testimony on a project that's important to
18 the City of Hayward and to all of its residents.

19 I would like to read into the record a
20 letter from the Agency:

21 Dear Mr. Keese: The Hayward Area Shoreline
22 Planning Agency, HASPA, established in 1970,
23 is a Joint Powers Agency consisting of
24 representatives from the Hayward Area
25 Recreation and Park District, East Bay

1 Regional Park District, Hayward Unified
2 School District, San Lorenzo Unified School
3 District and the City of Hayward.

4 The primary purpose of HASPA, with its
5 Citizens Advisory Committee, HASCAC, is to
6 coordinate planning activities and carry out
7 adopted policies for the shoreline area.

8 These policies, which are contained in the
9 Hayward area shoreline planning program, an
10 environmental enhancement program, guide the
11 Agency's efforts to protect and improve the
12 Hayward shoreline for future generations.

13 Through the efforts of HASPA and its member
14 agencies, over 3150 acres have been purchased
15 for public ownership, preserved, restored or
16 in the process of being returned to wetlands,
17 marshes and protected uplands. During the
18 past 18 months the member agencies and
19 individuals involved in HASPA and HASCAC have
20 participated in the ongoing review of the
21 proposed Russell City Energy Center.

22 While individual comments and suggestions
23 have been offered at various meetings
24 conducted by the CEC and its staff, HASPA has
25 chosen to await the release of the final

1 staff assessment before submitting any formal
2 comments on this project.

3 At its meeting on June 13, 2002, HASPA
4 discussed recommendations forwarded by
5 HASCAC, and is now submitting the following
6 comments for consideration by your
7 Commission:

8 HASPA is primarily concerned about the
9 issue of accountability. It is imperative
10 that all the elements identified in the
11 mitigation plan be in place and functional
12 according to the timeframe and conditions
13 specified in the agreement. Adequate funding
14 must be provided to assure proper
15 construction and ongoing maintenance of the
16 required facilities.

17 To insure compliance with the requirements
18 of the mitigation plan and enforcement of the
19 conditions of approval, it is very important
20 that annual reporting be conducted over the
21 life of the project. HASPA respectfully
22 requests that adequate notification be
23 provided to the public of the availability of
24 the annual reports so that progress and
25 implementation of the mitigation measures and

1 their effectiveness, including the predator
2 perching, monitoring and deterrent plan, can
3 be monitored by all interested parties.

4 HASPA continues to be available to assist
5 in monitoring such progress and determining
6 what recourse actions may be appropriate.

7 HASPA supports efforts to mitigate the loss
8 of wetlands on the project site through the
9 acquisition and enhancement of adjacent
10 wetlands in the shoreline area. In
11 particular, HASPA supports the planned
12 transfer of ownership of the waste management
13 property to East Bay Regional Park District,
14 and the lease arrangement for the City-owned
15 parcel in order to facilitate management of
16 these and adjacent wetlands by the District.

17 With the further understanding that the
18 historic function of the Johnson Landing Road
19 levee will not be lost, these efforts will
20 result in improved conditions and will serve
21 to protect existing investments by member
22 agencies in the shoreline area.

23 Thank you for this opportunity to comment
24 on the Russell City Energy Center. Very
25 truly yours, Joseph Hilson, Chair, HASPA

1 Board of Trustees."

2 Again, thank you.

3 HEARING OFFICER FAY: Thank you, Mr.
4 Hilson.

5 Let me just diverge for a moment and ask
6 the staff a question. Mr. Caswell, am I correct
7 that all the required reports that -- monitoring
8 reports that are listed in the conditions of
9 certification, when they're filed they'll be
10 public records?

11 MR. CASWELL: Correct.

12 HEARING OFFICER FAY: So those are all
13 available to the public?

14 MR. CASWELL: Correct.

15 HEARING OFFICER FAY: All right. Thank
16 you. We have a request from City Manager, Mr.
17 Armas, regarding the project description.

18 MR. ARMAS: We simply wanted to
19 reiterate that we worked over the last many months
20 with both CEC Staff and the applicant to address
21 many of the important issues that are associated
22 with this application. We think that most of them
23 have been satisfactorily addressed.

24 We think this is a good project and we
25 look forward to its implementation.

1 HEARING OFFICER FAY: Thank you. And
2 Audre LePell. And she is with HASPA, as well.

3 MS. LePELL: I am with HASPA. My name
4 is Audre LePell, and I live right now at 209
5 Poplar Avenue, but I'm moving this next 30 days
6 back into the city limits of Hayward.

7 I'm a member of the Hayward Area
8 Shoreline Planning Agency Citizens Advisory
9 Committee, but I'm not speaking in that capacity.

10 But because the CAC has kept abreast of
11 whatever is going on as much as possible, that's
12 how I happen to be here, because I'm one of those
13 people that's interested in what's going on.

14 I've been a member of the HASPA CAC for
15 over 30 years. So you should know that all of us,
16 and I think I could speak, that we feel very
17 protective of our shoreline. And we want it to be
18 enhanced and beautified and a wonderful place for
19 perpetuity, I think is one of the legal phrases
20 sometimes used.

21 But I'm speaking today primarily to
22 three concerns, and I just want to note them
23 because I was told for the record I can now write
24 to you in more detail concern. But I just wanted
25 to say what three of the ones that I am most

1 concerned about. And for the record, the CAC
2 minutes from our own organization will reflect
3 these concerns, and have in the past.

4 I received the packet and it was like
5 three inches thick last Thursday or Friday in the
6 mail. And I literally have not been able to read
7 it at all, because there have been some other very
8 important meetings that I was responsible to be
9 at. So I may not be completely aware of all the
10 staff recommendations.

11 So these are my three primary concerns:
12 traffic, and I'll write you about that. That's an
13 area which I work in transportation activities in
14 our community.

15 And air quality, and I'll be referring
16 to that, also, in my written word to you.

17 The shoreline, itself, we feel should
18 be, and continue to be, and is presently one of
19 the most beautiful shorelines in the Bay Area.
20 And although according to staff, the part that I
21 did read, they said that the radio tower has an
22 impact. Somehow they said the design of the
23 building doesn't have an impact. And there I
24 would respectfully disagree.

25 I sent you an August 11th pictures of

1 the opera house in Sydney, Australia, that
2 reminded me of the wave design. I hope that you
3 received copies of my letter and the pictures.

4 And I don't object to that, but I was
5 just wondering why that particular design was
6 selected, and did you have many beautiful other
7 alternatives to look at. We in the public did not
8 see any other alternatives.

9 I also suggested in my letter that you
10 open up that design to local architects and
11 artists to propose something else, other than what
12 you have done. And, of course, I haven't received
13 any written letter, but I hope sometime that you
14 would respond to that idea.

15 The State of California is known for its
16 fabulous architecture. And I think that something
17 that could be perhaps more amenable, at least to
18 perhaps part of the artistic community, could be
19 considered.

20 And my background there is that I was
21 the assistant to the art director of the Sun
22 Gallery for three years over ten years ago. I was
23 married to an artist for a number of year, many
24 years, and my area is environmental studies of
25 college work. So I wanted to let you know that

1 this is something that I talk about all the time.

2 And just for the record, I'm a member of
3 the Alameda County Planning Commission. And we
4 look at architectural nuances and designs all --
5 for the past years that I've been a member. So,
6 from my perspective, I'm very concerned about how
7 it looks to the public, to the citizens of
8 Hayward, and to the people crossing and driving on
9 the highway 92, to the airplanes flying overhead,
10 and to the entire shoreline and Bay Area.

11 And I thank you.

12 HEARING OFFICER FAY: Thank you for your
13 general comment. This clearly will be taken up,
14 the issue of visual resources, later this
15 afternoon.

16 MS. LePELL: I was just going to say --

17 HEARING OFFICER FAY: If we can move
18 expeditiously, early this afternoon, but sometime
19 this afternoon we'll be taking up visual.

20 And I don't want people to feel that if
21 they don't speak now they won't be able to address
22 particular issues later. We'd rather have you
23 address the issue when the topic comes up, because
24 that way the official transcript has your comments
25 following the discussion of the topic.

1 And I'd just like the staff to please,
2 and the applicant, to address her question about
3 why the wave design. And please cover that when
4 visual comes up, how that evolved.

5 Okay. I have no other indication of
6 comments on the project description. Are there
7 any other public comments on that topic?

8 All right, I see no indication, so we're
9 going to move to cultural resources.

10 MR. WHEATLAND: Mr. Fay, I'm sorry to --

11 HEARING OFFICER FAY: Yes, sir.

12 MR. WHEATLAND: I wanted to note that as
13 we go through each of these topic areas, your
14 outline has identified witnesses for the
15 applicant, as well.

16 Where I indicate that we don't have any
17 additional presentation it's because we're in
18 complete concurrence with the final staff
19 assessment in that subject area.

20 I'm wondering if it might be appropriate
21 at this time to mark for identification the two
22 exhibits that the applicant has prepared that is
23 supporting testimony in these subject areas, so we
24 would have those identified.

25 HEARING OFFICER FAY: All right. If you

1 will name the exhibit as explicitly as you can,
2 I'll give it an exhibit number.

3 MR. WHEATLAND: Yes, the first exhibit
4 is the testimony in support of the application for
5 certification.

6 HEARING OFFICER FAY: That's exhibit 2.

7 MR. WHEATLAND: And the next exhibit is
8 addendum testimony, errata and comments on the
9 final staff assessment.

10 HEARING OFFICER FAY: And that's exhibit
11 3.

12 MR. WHEATLAND: Thank you.

13 HEARING OFFICER FAY: And I understand
14 that Mr. Leahy's testimony is contained in exhibit
15 2, is that correct?

16 MR. WHEATLAND: That is correct.

17 HEARING OFFICER FAY: And you're
18 submitting that on declaration?

19 MR. WHEATLAND: Yes, that is correct.

20 HEARING OFFICER FAY: All right. What
21 this means is that Mr. Leahy's testimony, even
22 though he didn't speak, his written testimony
23 comes into the record as if he did speak. And we
24 do things that way when a matter is not contested,
25 just to take the evidence into the record more

1 efficiently.

2 And where there is concern, controversy,
3 et cetera, we will be dealing in the traditional
4 way with live witnesses summarizing their
5 testimony and being available for cross-
6 examination.

7 The first topics today have really not
8 had controversy, and so that's why we're going to
9 try and move through them quickly.

10 So, Mr. Wheatland, moving to land use.

11 MR. WHEATLAND: In the area of land use
12 the applicant is in concurrence with the
13 recommendations by the staff in the final staff
14 assessment.

15 HEARING OFFICER FAY: All right. And do
16 you have testimony contained in exhibit 2 on that
17 topic?

18 MR. WHEATLAND: Yes. And that's the
19 testimony of Mr. Brent L. Moore.

20 HEARING OFFICER FAY: All right, any
21 objection to receiving that at this time? Hearing
22 none, so that will be received in the record as if
23 read.

24 Mr. Ratliff.

25 MR. RATLIFF: The staff has Mr. David

1 Flores here to present the staff's testimony, or
2 answer any questions that the Committee has. No
3 issues were identified in the area of land use, so
4 Mr. Flores is available if you wish to hear him
5 summarize his testimony.

6 HEARING OFFICER FAY: All right. Why
7 don't we swear Mr. Flores and have him very
8 briefly summarize the testimony just so folks can
9 understand what was covered in that.

10 Whereupon,

11 DAVID FLORES
12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. RATLIFF:

17 Q Mr. Flores, did you prepare the
18 testimony in the AFC entitled land use?

19 A Yes, I did. I assisted; Jon Davidson
20 was also the co-author of the document.

21 Q And were you responsible for supervising
22 his work, as well?

23 A Yes.

24 Q Is that testimony true and correct to
25 the best of your knowledge and belief?

1 A Yes, it is.

2 Q Do you have any corrections to make to
3 it today?

4 A No.

5 Q Could you summarize it very briefly?

6 A Yes. Staff reviewed the various general
7 plan policies and also the zoning ordinances of
8 the City of Hayward and determined that they were
9 consistent with the proposed project.

10 As indicated in the staff analysis
11 within the general plan the project is designated
12 as industrial corridor, and also as in the zoning
13 ordinance it is also zoned industrial.

14 Also in the report staff indicated that
15 the City Council had determined that the project
16 was consistent with the general plan in an
17 appropriate use in the industrial corridor.

18 As part of our conclusions staff
19 indicated the project was consistent again with
20 the applicable land use policies, regulations and
21 not in conflict with any applicable habitat
22 conservation plans.

23 Staff has indicated two land use
24 conditions of certification that the project will
25 be in conformance with implementation of the

1 development standards in the industrial zoning and
2 also the project will be required to merge the two
3 parcels that constitute the project site in order
4 to employ the construction of building across the
5 property lines.

6 That completes staff's brief analysis.

7 HEARING OFFICER FAY: All right, thank
8 you. Do you have any questions?

9 MR. WHEATLAND: No.

10 HEARING OFFICER FAY: I just wanted the
11 City to confirm that the project will comply with
12 all the land use requirements.

13 MR. ARMAS: Yes. That was the intent of
14 my request to address the Commission. The
15 applicant did go through a process of determining
16 conformity with our zoning ordinance and other
17 land use regulations.

18 Both the Planning Commission and the
19 City Council made such a determination.

20 HEARING OFFICER FAY: Thank you. All
21 right, then, thank you, Mr. Flores.

22 And move to cultural resources.

23 MS. GEORGE: Excuse me, did you say that
24 we're -- that there's public comment --

25 HEARING OFFICER FAY: Oh, yes, I'm

1 sorry. Please. Do you have a comment on land
2 use? We're going to be moving quickly so the blue
3 cards may be a little awkward. You can raise your
4 hand.

5 MS. GEORGE: Women's Energy Matters
6 reserves the right to challenge the land use
7 propriety of this application at a later date.

8 HEARING OFFICER FAY: Okay. Did you
9 have any specific comments to make about the land
10 use --

11 MS. GEORGE: We believe this is an
12 improper use of land, and we believe that there
13 are impacts on the critters out there.

14 HEARING OFFICER FAY: Okay.

15 MS. GEORGE: People included.

16 HEARING OFFICER FAY: Okay. And we will
17 be addressing biology at a later time in more
18 detail, as well.

19 Any other comments? Yes.

20 MR. TONG: Good morning, Commissioners.
21 Larry Tong, East Bay Regional Park District.

22 I'm not sure if this is the most
23 appropriate time, but in any event I'd like to
24 make a statement that the Park District had a
25 number of issues when we started this process

1 about a year ago.

2 But through the workings with the
3 applicant and especially with the CEC Staff, the
4 Park District is satisfied overall that our Park
5 District interests have been met through the
6 agreement that we have entered into with the
7 applicant and with the associated conditions of
8 certification.

9 So I would thank the Commission and the
10 Commission Staff.

11 HEARING OFFICER FAY: Thank you. And
12 I'll just note that at a later time, I think the
13 most appropriate time would be under biological
14 resources, we are going to address the agreement
15 between East Bay Parks District and the applicant,
16 the MOU, as it's referred to. Thank you.

17 Any other comments on land use?

18 All right, thank you. Mr. Wheatland,
19 cultural resources.

20 MR. WHEATLAND: The applicant has
21 submitted the testimony of Andrew Gorman in
22 exhibit 2, and the applicant is in concurrence
23 with the recommendations of the staff in the final
24 staff assessment on the topic of cultural
25 resources.

1 HEARING OFFICER FAY: All right, thank
2 you. Any objection to receiving that testimony?
3 Hear none, so that's moved into evidence.

4 Mr. Wheatland, on cultural resources --
5 I mean Mr. Ratliff.

6 MR. RATLIFF: Yes, do you want us to
7 move each area individually at the time that we
8 have our witnesses speak or --

9 HEARING OFFICER FAY: Just to keep
10 things clear.

11 MR. RATLIFF: Sure, then we so move.

12 HEARING OFFICER FAY: All right. Any
13 objection? All right, admitted.

14 Hazardous materials, Mr. Wheatland.

15 MR. WHEATLAND: We have set forth the
16 testimony of W. Douglas Urry in exhibit 2. And we
17 are in concurrence with the recommendations of the
18 staff on the subject of hazardous materials.

19 HEARING OFFICER FAY: All right. Before
20 we move that I'd just like to ask you, I
21 understand that you have a comment on condition of
22 certification HAZ-2?

23 MR. WHEATLAND: Oh, yes, we have a
24 comment in that area. It requires that the final
25 approved risk management plan and hazardous

1 material business plan be submitted to the staff
2 CPM, that's the compliance project manager, at
3 least 30 days prior to the commencement of
4 construction. And we believe that the staff has
5 agreed, during the public workshop, that this
6 should be modified to require submittal of these
7 plans at least 60 days prior to the construction
8 of any hazardous material storage facilities.

9 HEARING OFFICER FAY: Okay. So your
10 understanding is that that's been agreed to and it
11 just was not reflected in the final staff
12 assessment, is that correct?

13 MR. WHEATLAND: Yes.

14 HEARING OFFICER FAY: Okay. And, are
15 you moving the testimony of --

16 MR. WHEATLAND: Yes, I'd move, please,
17 the testimony into evidence of Mr. Urry.

18 HEARING OFFICER FAY: Any objection?
19 Okay, so moved.

20 Mr. Ratliff, Mr. Caswell, can you
21 address the 30-day, 60-day question?

22 MR. RATLIFF: Well, we have Dr. Alvin
23 Greenberg here --

24 HEARING OFFICER FAY: Oh, good.

25 MR. RATLIFF: -- who is the witness in

1 that area. Perhaps he can respond, at this time,
2 to the requested change to the timelines.

3 HEARING OFFICER FAY: Please swear the
4 witness.

5 Whereupon,

6 ALVIN GREENBERG
7 was called as a witness herein, and after first
8 having been duly sworn, was examined and testified
9 as follows:

10 HEARING OFFICER FAY: Dr. Greenberg, did
11 you conduct the analysis of the use of hazardous
12 materials by this project, and what impacts that
13 may have on the environment on behalf of the
14 California Energy Commission?

15 DR. GREENBERG: Yes, I did.

16 HEARING OFFICER FAY: And in reviewing
17 this and discussing it with the applicant and
18 other parties, did you reach agreement according
19 to Mr. Wheatland's comments?

20 DR. GREENBERG: Yes, I did. That was
21 also reflected in changes that I made to my hazmat
22 testimony that was submitted in February. But
23 unfortunately, that version seems to have gotten
24 lost. And an older version of the hazmat
25 testimony was printed.

1 And so the applicant is quite correct
2 that we did indeed agree that the verification
3 would read as they have proposed.

4 HEARING OFFICER FAY: And could you
5 please reference the change verbatim that should
6 be made to your testimony with the page reference
7 to exhibit 1, the FSA?

8 DR. GREENBERG: Page 4.4-9, under HAZ-2,
9 verification, it would read: At least 60 days
10 prior to the commencement of hazardous materials
11 storage and containment structure construction the
12 project owner shall provide the final plans (RMP
13 and HMBP) listed above and accepted by the City of
14 Hayward to the CPM for approval."

15 HEARING OFFICER FAY: And the reason for
16 that change is what?

17 DR. GREENBERG: The reason is really
18 straightforward. What we're concerned about here
19 is the construction of the actual containment
20 facilities for hazardous materials use, as opposed
21 to construction of any other facilities and
22 structures at the site.

23 HEARING OFFICER FAY: I see.

24 DR. GREENBERG: And this gives them a
25 sufficient amount of time prior to construction of

1 the hazardous materials containment facilities for
2 review and evaluation by the CPM, by the City of
3 Hayward Fire Department. But it doesn't
4 necessarily, that timeline doesn't necessarily
5 coincide with other construction activities for
6 other buildings onsite.

7 HEARING OFFICER FAY: Okay, so you
8 targeted the condition for the actual item that is
9 addressed?

10 DR. GREENBERG: Correct.

11 HEARING OFFICER FAY: Thank you very
12 much.

13 DR. GREENBERG: You're welcome.

14 HEARING OFFICER FAY: Any cross-
15 examination of Dr. Greenberg?

16 MR. WHEATLAND: No.

17 HEARING OFFICER FAY: All right. By any
18 other parties? And, by the way, when I ask for
19 cross-examination I know we've got a
20 representative of the East Bay Parks here. You're
21 certainly, as a party, entitled to cross-examine
22 as you choose.

23 All right, I hear nothing. So, thank
24 you, Dr. Greenberg.

25 MS. GEORGE: Public comment? Public

1 comment?

2 HEARING OFFICER FAY: We will. And, Mr.
3 Ratliff, did you want to move the exhibit at this
4 time?

5 MR. RATLIFF: Yes, we will.

6 HEARING OFFICER FAY: Any objection to
7 receiving Dr. Greenberg's testimony into evidence?

8 I hear none, so that is received.

9 MS. GEORGE: I have a public comment on
10 cultural resources first, because we were not
11 given an opportunity to make a comment on that.
12 And also on hazardous materials.

13 And for both of them Women's Energy
14 Matters reserves the right to make a further
15 comment at a later date on these issues.

16 And at the moment I will just say that
17 it is a pity that the cultural resources of the
18 renewable energy community in California have not
19 been considered in regard to this application.

20 And as far as hazardous materials, I
21 don't believe that the impacts of the hazardous
22 materials of natural gas have been properly
23 addressed.

24 HEARING OFFICER FAY: Ms. George, before
25 you leave, I just want to ask, have you read the

1 final staff assessment?

2 MS. GEORGE: I have not read the final
3 staff assessment, no.

4 HEARING OFFICER FAY: Okay. Thank you.

5 MS. GEORGE: I understand the final
6 staff assessment is three inches thick and it
7 arrived on somebody desk last Friday. I have not
8 received a copy because I'm not an intervenor. I
9 am on the service list on the email, but I did not
10 see any final staff assessment that I was able to
11 download.

12 HEARING OFFICER FAY: Okay. Just for
13 your information, I believe that the final staff
14 assessment does address the risks from the use of
15 natural gas, and I believe the preliminary staff
16 assessment addressed that, as well.

17 Is that correct, Mr. Caswell?

18 MS. GEORGE: Does it address the risks
19 of war?

20 MR. CASWELL: That is correct. There's
21 a several-page discussion on the risks and hazards
22 posed by the use of natural gas in the facility.
23 And the regulations and mitigations that must be
24 followed in order to insure the public safety.

25 HEARING OFFICER FAY: Okay.

1 MS. GEORGE: Does that include the
2 hazard of war?

3 HEARING OFFICER FAY: I don't know. Or
4 terrorism?

5 MS. GEORGE: Or terrorism.

6 MR. CASWELL: The issues address a
7 generic release, whether it's intentional by
8 sabotage, terrorism, or accidental. And so all
9 the mitigation for the natural gas would address
10 all the scenarios that you could envision, with
11 the --

12 MS. GEORGE: And including LNG --

13 MR. CASWELL: -- possible exception of
14 nuclear war, which we'd probably have bigger
15 issues to deal with.

16 MS. GEORGE: LNG is also addressed in
17 that?

18 MR. CASWELL: Liquid natural gas is not
19 addressed. This facility isn't going to be using
20 liquid natural gas. It's using natural gas from
21 the pipeline.

22 MS. GEORGE: For now. But we don't know
23 what will happen later. We may need an LNG port
24 here to get us natural gas.

25 HEARING OFFICER FAY: And some of this -

1 - this hearing is not a chance for give-and-take.
2 We had workshops --

3 MS. GEORGE: I'm just making a public
4 comment --

5 HEARING OFFICER FAY: -- for that.

6 MS. GEORGE: -- I'm not -- I don't care
7 about give-and-take.

8 HEARING OFFICER FAY: However, --

9 MS. GEORGE: You don't have to comment
10 on what I say.

11 HEARING OFFICER FAY: -- I'm trying to
12 help you out here by way of information. If, for
13 instance, the applicant chose to change the fuel
14 to LNG, it would have to return to the Energy
15 Commission and apply for a change. And the
16 environmental impacts of that change would have to
17 be analyzed and the public would have an
18 opportunity to comment on that.

19 So, this is not just a foot in the door.
20 The consideration, this particular project, and if
21 it is changed in any way in the future the owner
22 must come back to the Energy Commission to make
23 that change.

24 I also want to mention, if you would
25 like, if you intend to just reserve your right to

1 comment on all these areas, you can just state now
2 if it's --

3 MS. GEORGE: I do, yes, exactly.

4 HEARING OFFICER FAY: So, just to save
5 you the trouble of getting up each time --

6 MS. GEORGE: Okay, that would be great.

7 HEARING OFFICER FAY: Okay, that's fine.

8 Any other comments on hazardous materials?

9 All right, I see no indication. So we
10 will move to the topic of noise and vibration.

11 MR. WHEATLAND: The applicant is in
12 concurrence with the staff's proposed conditions
13 of certification in the area of noise and
14 vibration. And we would like to move into
15 evidence the testimony of Thomas S. Adams as set
16 forth in exhibit 2.

17 HEARING OFFICER FAY: Any objection to
18 that? I hear none, so moved.

19 And, Mr. Ratliff.

20 MR. RATLIFF: The staff witness is
21 Brewster Birdsall.

22 HEARING OFFICER FAY: And is Mr.
23 Birdsall's testimony contained in exhibit 1
24 through a declaration?

25 MR. RATLIFF: Yes.

1 HEARING OFFICER FAY: Okay. Do you wish
2 to move that at this time?

3 MR. RATLIFF: Yes, please.

4 HEARING OFFICER FAY: All right, any
5 objection to receiving that? Hearing none, so
6 moved.

7 That concludes taking our filed
8 evidence, prefiled evidence on noise and
9 vibration. Is there any public comment on that
10 topic?

11 All right, Ms. George.

12 MS. GEORGE: My understanding is that at
13 the Metcalf facility the noise, the community
14 asked for a noise mitigation. And the Commission
15 denied that. We believe that it was strictly to
16 save a few million dollars for the applicant. And
17 we feel that's an improper misuse of the rights of
18 the people surrounding the area.

19 And we also believe that there would be
20 impacts on pedestrians in the shoreline park area,
21 in addition to people in houses which perhaps are
22 not as close.

23 HEARING OFFICER FAY: I have to point
24 out that standards that apply to Metcalf are not
25 relevant to this proceeding.

1 But, again, the FSA does address the
2 analysis carried out by the staff and the
3 applicant on that topic.

4 MR. RATLIFF: Mr. Fay, we actually have
5 Mr. Birdsall here if you would him to summarize
6 his testimony briefly. If the Commission so
7 wishes to hear it, that is.

8 HEARING OFFICER FAY: All right, let's
9 take a moment and have him do that. Mr. Birdsall.
10 Whereupon,

11 BREWSTER BIRDSALL
12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. RATLIFF:

17 Q Mr. Birdsall, did you prepare the staff
18 testimony on noise in the FSA?

19 A Yes, I did.

20 Q Is it true and correct to the best of
21 your knowledge and belief?

22 A Yes, it is.

23 Q Do you have any changes to make in it at
24 this time?

25 A I do not.

1 Q Could you summarize it briefly?

2 A Sure. The noise assessment in the final
3 staff assessment reviewed the impacts of the
4 operation and the construction of the power plant
5 to the nearby sensitive receptors, which include
6 residences that are approximately .8 mile to the
7 east of the project, sort of near the intersection
8 of Industrial Boulevard and -- Road.

9 There are, besides the sensitive
10 receptors, which are residences, to the east there
11 are other points nearby the power plant that are
12 critical for determining compliance with the City
13 of Hayward's noise element.

14 Those locations are the industrial
15 boundaries to the north which have a target point
16 for a noise level of 75 ldn. And then points
17 within the East Bay Regional Parks District
18 jurisdiction, which have a noise target level of
19 70 ldn. And these are target levels from the City
20 of Hayward's noise element.

21 We reviewed the impacts of the project.
22 The project did not cause significant increases in
23 the noise levels within the East Bay Regional
24 Parks District's jurisdiction. With the
25 applicant's proposed noise mitigation schemes, the

1 project would meet, according to their design, a
2 target level at the industrial boundary of 75 ldn.
3 And that's including the project noise with the
4 existing noise from the water pollution control
5 facility.

6 In order to insure that the project
7 would indeed comply with the City of Hayward noise
8 element goals, we proposed a number of conditions
9 of certification, eight conditions of
10 certification to be exact.

11 And specifically one that would address
12 post-operational noise monitoring. And this means
13 that the applicant, once the facility is
14 constructed, will go back to the original noise
15 monitoring locations within the jurisdiction of
16 the Parks District, and also at the industrial
17 boundary, and also at the residences off to the
18 east, to verify that, indeed, the project does
19 meet the stated City of Hayward element goals and
20 the significance criteria of the Energy
21 Commission.

22 And with the proposed conditions of
23 certification no significant impacts would occur.

24 HEARING OFFICER FAY: Now, Mr. Birdsall,
25 when you say that the project would come back to

1 these sensitive locations, what exactly does that
2 mean? Do they take an instrument back there and
3 measure actual noise at that location?

4 MR. BIRDSALL: When I say the applicant
5 would go back to those locations I'm referring to
6 a return of their testing to these locations where
7 they had examined the existing conditions and the
8 baseline without the project.

9 In preparation for their AFC they
10 visited these locations that I mentioned. Once
11 the plant becomes operational they will return to
12 these locations with the field monitor and
13 physically sample the noise levels with the
14 project operational. And the conditions of
15 certification then would determine whether or not
16 the future noise level is, indeed, one that would
17 qualify as less than significant impacts.

18 HEARING OFFICER FAY: And what is their
19 measurements reveal that the project is causing
20 higher sound levels than allowed under the
21 conditions?

22 MR. BIRDSALL: Well, the verification
23 within the condition of certification specifies
24 that the applicant would return to the design or
25 the operation of the power plant and retrofit it

1 to, indeed, achieve these target noise levels.

2 HEARING OFFICER FAY: And the noise
3 levels are all within the City requirements, is
4 that right?

5 MR. BIRDSALL: That's correct. This is
6 how the target noise levels are derived.

7 HEARING OFFICER FAY: Thank you.

8 MR. BIRDSALL: You're welcome.

9 HEARING OFFICER FAY: Thank you for that
10 clarification, and you're excused, Mr. Birdsall.
11 Unless there's anything further from Mr. Ratliff.

12 MR. RATLIFF: No, staff would just move
13 his testimony in.

14 HEARING OFFICER FAY: Okay. Any
15 objection to receiving that at this time? Hearing
16 none, so moved.

17 We'll now move to public health. Mr.
18 Wheatland.

19 MR. WHEATLAND: The applicant is in
20 concurrence with the recommendations of the staff
21 and proposed conditions of certification in the
22 subject of public health; and I would like to move
23 into evidence the testimony of Monica J. Caravati
24 set forth in exhibit 2.

25 HEARING OFFICER FAY: Is there any

1 objection to receiving that? Hearing none, so
2 moved.

3 And we'll move to the staff now.

4 MR. RATLIFF: The staff witness who
5 prepared the testimony for public health is Dr.
6 Odoemelum. We would move his testimony by
7 declaration at this time.

8 HEARING OFFICER FAY: And that's
9 contained in exhibit 1?

10 MR. RATLIFF: Yes.

11 HEARING OFFICER FAY: Any objection to
12 receiving Dr. Odoemelum's testimony? Hearing
13 none, so moved.

14 Is there public comment on the issue of
15 public health?

16 MS. GEORGE: My understanding is that
17 these new power plants are significant problem for
18 public health. And that actually a certain number
19 of people will die because of the pollution that
20 the power plant produces.

21 And we don't believe that the people of
22 Hayward or the Energy Commission would allow
23 people to be trotted out to the street corner and
24 shot, and no more do we believe that they should
25 be subjected to death by power plant pollution.

1 When it's totally unnecessary because there's
2 energy efficiency measures and renewable energy
3 which does not cause pollution, which could be
4 substituted for this plant.

5 HEARING OFFICER FAY: Okay. Mr.
6 Caswell, why don't you just briefly touch on the
7 standards and thresholds that are looked at under
8 public health --

9 MR. RATLIFF: Well, if we're going to do
10 that we have basically the Supervisor for the
11 Public Health area. If you would prefer that he
12 do that, that might be more useful.

13 HEARING OFFICER FAY: Okay, sure, let's
14 have Mr. Ringer testify, and just explain in brief
15 terms what the Commission looks at.
16 Whereupon,

17 MICHAEL RINGER
18 was called as a witness herein, and after first
19 having been duly sworn, was examined and testified
20 as follows:

21 DIRECT TESTIMONY

22 MR. RINGER: As part of our typical
23 public health analysis for an energy plant such as
24 this, we look at three different measures of
25 significance.

1 The first one is based on short-term
2 health impacts, which are not cancer. The second
3 is long-term health impacts, which are not cancer.
4 And the third is the risk of getting cancer from
5 facility operation.

6 We look at levels that were established
7 over periods of time by the Office of
8 Environmental Health Hazard Assessment, which are
9 levels of chemicals that people can be exposed to
10 without any harm whatsoever.

11 And also for the cancer risk we do a
12 health risk assessment which is a worst case
13 analysis, which takes into account somebody being
14 at the maximum point of impact for the plant's
15 emissions over their entire lifetime.

16 And each of these staff has looked at
17 the operation of this facility and determined that
18 there would not be any significant health impacts,
19 either the short or the long term.

20 HEARING OFFICER FAY: And when you say
21 not any significant health impacts, can you give
22 us a quantitative measurement? What it means for
23 a human being to stay located in the maximum point
24 of impact for their entire lifetime. What is the
25 risk? How long is that lifetime?

1 MR. RINGER: For the non cancer impacts,
2 compared to the cancer impacts, there are
3 different locations for each of these, so for
4 instance, we take a look at the maximum point of
5 impact strictly for short-term impacts, which
6 would be on an hourly basis.

7 And what that means is that with the
8 conservative modeling that's used, and that takes
9 into account worst case meteorological conditions,
10 the most contaminants that could be emitted from
11 this power plant, taking all these into account
12 and being as conservative as possible, comparing
13 what a person would be exposed to relative to what
14 they could be exposed to, we don't expect any
15 health impacts at all.

16 That's for both the short term and the
17 long term.

18 For cancer the assumption is made that
19 somebody would be at the point of maximum impact
20 for 70 years, which is even in excess of what the
21 plant is slated to operate.

22 So, for 70 years the person standing
23 there -- trying to find the exact numbers --

24 MR. WHEATLAND: It's at page 4.7-6.

25 MR. RINGER: Okay, I was looking for a

1 table, -- couldn't find it right away.

2 Okay, 4.7-6 under B, operation, cancer
3 risk estimate of .174 was calculated for all the
4 project's carcinogens. This means that there
5 would be less -- there would be .174 chances in a
6 million of a person contracting cancer over their
7 entire lifetime if they stayed at the point of
8 maximum impact.

9 And that could be looked at in a couple
10 different ways. Compared to the average person's
11 chances of getting cancer over their lifetime,
12 which is approximately one in three, or one in
13 four, which is on the order of 250,000 in a
14 million, this is .174.

15 Since this is less than the significance
16 level of ten in a million, we don't consider that
17 there would be any health impacts.

18 Further, this is even less than one in a
19 million. And we consider that with the
20 conservatisms involved, that this is basically in
21 the noise background. We would expect
22 realistically no chances of getting cancer from
23 this project's operation.

24 BY MR. RATLIFF:

25 Q Mr. Ringer, could I just ask if that

1 health risk assessment is done in accordance with
2 the requirements of the CAPCOA guidelines?

3 A Yes, there is a CAPCOA standards,
4 California Air Pollution Control Officers
5 Association, in conjunction with the Air Resources
6 Board and the Office of Environmental Health
7 Hazard Assessment there are a number of
8 assumptions and ways in which the modeling is
9 conducted. And so this was done in accordance
10 with those guidelines.

11 HEARING OFFICER FAY: All right, thank
12 you very much, Mr. Ringer, appreciate that
13 explanation. You're excused.

14 All right, now we'll move to the topic
15 of traffic and transportation. Mr. Wheatland.

16 MR. WHEATLAND: The applicant concurs
17 with the staff's recommendations in the conditions
18 of certification for traffic and transportation.
19 And I would move into evidence the testimony of
20 Brent L. Moore in exhibit 2 on this subject.

21 HEARING OFFICER FAY: Any objection?
22 All right, so moved.

23 Mr. Ratliff.

24 MR. RATLIFF: Yes, the staff witness on
25 traffic and transportation was Fred Choa. And

1 I'll move that his testimony, exhibit 1, be moved
2 into evidence at this time.

3 HEARING OFFICER FAY: Any objection?
4 All right, so moved.

5 Chairman Keese would like a brief
6 summary of just how the staff approached the
7 analysis on that. Mr. Caswell, can you help us
8 there?

9 MR. CASWELL: I'll attempt to. I don't
10 have the staff person assigned to that here today.

11 (Pause.)

12 MR. CASWELL: I'll give you the basic
13 headings under the criteria that this analysis was
14 reviewed under.

15 And one was substantial increase in
16 traffic. The second was exceedance of established
17 level of service standards. Change in air traffic
18 patterns. Substantial increase in traffic --.
19 Inadequate emergency access and inadequate parking
20 capacity. Transportation of hazardous materials.

21 And those were the main criteria which
22 was traffic and transportation review.

23 HEARING OFFICER FAY: And what did the
24 staff determine as a result of their --

25 MR. CASWELL: Their conclusions on this

1 were in a table on page 4.9-4; and they felt under
2 either less insignificant with mitigation
3 incorporated, less than significant impact or no
4 impact were the three criteria that staff
5 established.

6 HEARING OFFICER FAY: So in the first
7 criterion you mentioned I gather that means that
8 in that particular area the staff believed that so
9 long as the required mitigation was implemented
10 there would not be any significant impacts there,
11 correct?

12 MR. CASWELL: That's correct.

13 HEARING OFFICER FAY: And then the other
14 areas of examination had even fewer impacts?

15 MR. CASWELL: Correct.

16 HEARING OFFICER FAY: And what are some
17 of the mitigations that staff uses, for instance
18 to address inadequate parking capacity, to be sure
19 that doesn't cause a problem?

20 MR. CASWELL: Could you say that again?

21 HEARING OFFICER FAY: What type of
22 mitigation is required so that the applicant must
23 solve any potential problems for inadequate
24 parking capacity?

25 MR. CASWELL: The applicant is required

1 to identify a parking location, whether it be at
2 the site or a remote site, and suggested
3 transportation mode from a remote site to the
4 construction area to alleviate the lack of
5 availability -- available parking at a particular
6 site.

7 And they will provide suggested
8 measures. And our staff will require certain
9 measures to be taken to provide the transportation
10 from those remote sites to the construction site.

11 HEARING OFFICER FAY: So is it your
12 impression that the conditions of certification
13 that staff is offering will address any potential
14 significant impacts on the area of either parking
15 congestion or traffic load congestion, that sort
16 of thing?

17 MR. CASWELL: Correct.

18 HEARING OFFICER FAY: And staff will
19 monitor to insure these mitigation measures
20 actually take place?

21 MR. CASWELL: Yes, we have a compliance
22 project manager that will be onsite and monitors,
23 and that's where we enforce, prior to construction
24 and during construction, monitor the conditions of
25 certification are complied with.

1 HEARING OFFICER FAY: Okay. Thank you.

2 Is there any public comment regarding traffic

3 matters? Did Ms. LePell have a comment on

4 traffic? I thought she mentioned she did.

5 Apparently not. Okay, I see no indication, so

6 we'll move on to the next topic.

7 Transmission line safety and nuisance.

8 Mr. Wheatland.

9 MR. WHEATLAND: The applicant concurs

10 with the staff's proposed conditions of

11 certification for transmission line safety and

12 nuisance.

13 And I would move into evidence the joint

14 testimony of Mr. Wood and Mr. Amirali on this

15 subject as set forth in exhibit 2.

16 HEARING OFFICER FAY: Any objection?

17 All right, so moved.

18 And, Mr. Ratliff.

19 MR. RATLIFF: Staff witness, whose

20 testimony is part of exhibit 1, is Dr. Odoemelam.

21 And we would move his testimony into evidence at

22 this time.

23 HEARING OFFICER FAY: Any objection?

24 All right, that's received at this point.

25 And, Mr. Caswell, just in a sentence or

1 two what does that mean, transmission line safety
2 and nuisance, what has the staff examined on that?

3 MR. CASWELL: I can summarize that a few
4 topic headings, they're in aviation safety,
5 interference with radio frequency, communication,
6 audible noise, fire hazards, hazardous shocks,
7 nuisance shocks and electric and magnetic field,
8 EMF, exposure.

9 We do not believe that this project will
10 create any significant dangers or unmitigatable
11 situations as it relates to this project.

12 HEARING OFFICER FAY: All right. Thank
13 you. Any public comment regarding transmission
14 line safety and nuisance?

15 MS. GEORGE: I believe there are a
16 number of studies that have been going on for 20
17 years or more at EPRI, and possibly also at the
18 Energy Commission, and elsewhere, perhaps at the
19 utilities, concerning EMF.

20 I don't believe that all of those
21 studies have been made public. I believe that
22 there is a significant impact from EMF which has
23 been hidden from the public and I request that the
24 EMF studies be revealed to the Commission at this
25 time by whoever has been looking at that,

1 including EPRI.

2 HEARING OFFICER FAY: Okay, thank you.

3 I'll just mention, I know of previous cases in
4 which he has testified that Dr. Odoemelum is or
5 was on the state panel addressing EMF. And is
6 very familiar with the status of the various
7 studies in depth.

8 And I think it's reasonable to assume
9 that he took that information and knowledge into
10 account in his analysis. He does show several
11 conditions, proposed conditions of certification,
12 five in fact, to be sure that the project complies
13 with -- yes, and Ms. Townsend-Huff has pointed out
14 to me that the references at the back of Dr.
15 Odoemelum's testimony cite a number of the studies
16 done by EPRI regarding EMF.

17 So, that was part of his analysis.

18 Any other comments on transmission line
19 safety and nuisance? Yes?

20 MR. WHEATLAND: I'd like to correct one
21 item if I could please. As we indicated in the
22 errata on page 22 of exhibit 3, the chapter of our
23 testimony that was entitled transmission system
24 engineering and transmission line safety and
25 nuisance, which I just moved into evidence, should

1 have properly been captioned transmission system
2 engineering, which I note you have later on down
3 on the agenda for today's meeting as the last
4 item.

5 So I'd like to withdraw my motion to
6 move it into evidence at this time. I'll make
7 that motion again at the end of the day.

8 HEARING OFFICER FAY: Okay, fine, so
9 your testimony just focused on transmission system
10 engineering --

11 MR. WHEATLAND: Just on the engineering,
12 yes, sir.

13 HEARING OFFICER FAY: All right. Okay,
14 we're moving now to the topic of waste management.
15 Mr. Wheatland.

16 MR. WHEATLAND: Again we concur with the
17 proposed conditions of certification, and I'd move
18 into evidence the testimony of Mr. Urry as set
19 forth in exhibit 2.

20 HEARING OFFICER FAY: Any objection?
21 We'll receive that into evidence at this time.

22 Mr. Ratliff.

23 MR. RATLIFF: Staff witness is Dr.
24 Greenberg, who was previously sworn. If the
25 Committee could like, he's available to summarize

1 his testimony.

2 HEARING OFFICER FAY: Dr. Greenberg,
3 could you give us a brief summary of what staff
4 looked at under this heading?

5 DR. GREENBERG: I'd be happy to. The
6 staff reviews not only the waste that would be
7 generated, both hazardous and nonhazardous waste,
8 during construction and operations, but also the
9 nature of any waste that may be on the site,
10 itself.

11 And in this case there is hazardous
12 waste on the site. And the applicant will be
13 required to have completed remediation through an
14 agreement with the Regional Water Quality Control
15 Board so that there is closure of the site so that
16 prior to site preparation. And that is standard
17 procedure for California Energy Commission
18 certified power plants; the sites do have to be
19 remediated. In other words, cleaned up prior to
20 site excavation and activities.

21 Second of all, then, as I mentioned
22 earlier, we then look at waste that would be
23 generated during construction activities. We look
24 at waste that would be generated during
25 operational activities. And assure ourselves that

1 there is adequate recycling; that there is
2 adequate diversion away from landfills for both
3 solid, for both hazardous and nonhazardous wastes.

4 And that that waste that goes to a
5 landfill, that there is adequate capacity to
6 handle those wastes for the duration of a power
7 plant.

8 Staff has done that, and we concur --
9 rather, we recommend certain conditions of
10 certification.

11 HEARING OFFICER FAY: All right. And
12 this is for both you and Mr. Caswell.

13 We've been marching along here, and Mr.
14 Wheatland had said on behalf of the applicant they
15 agree with the conditions of certification.

16 Now is that something that just -- was
17 just invented just now, or has there been a
18 process for many months now where the applicant
19 and staff have exchanged documents and had
20 workshops, et cetera? What's been going on up
21 till now?

22 DR. GREENBERG: That is exactly what has
23 been going on. These conditions of certification
24 are not new. They've been in circulation for many
25 many months. And there have been discussions at

1 workshops.

2 HEARING OFFICER FAY: And are those
3 closed-door sessions?

4 DR. GREENBERG: No, they're open
5 sessions to the public. The public has been
6 there; has heard every word. And has, indeed,
7 asked questions and participated.

8 HEARING OFFICER FAY: All right. Thank
9 you. I just want to be sure people understand, so
10 when we say, or some of the parties say they agree
11 with the conditions, this isn't just some closed-
12 door arrangement. This is the culmination of the
13 process that's gone on for many many months in
14 reviewing this project.

15 Mr. Ratliff, do you wish to move --

16 MR. RATLIFF: Yes, please.

17 HEARING OFFICER FAY: -- Dr. Greenberg's
18 testimony? All right, so moved.

19 Now we'll take any public comment on
20 waste management, the handling of the waste --
21 yes, ma'am.

22 MS. JUNGE: Just very briefly --

23 HEARING OFFICER FAY: Your name?

24 MS. JUNGE: Sheila Junge, I'm a resident
25 of Hayward. You have a card from me on another

1 issue of biological resources.

2 This comment is somewhat biological
3 resource related in that I hope as part of the
4 waste handling you will consider requiring the
5 applicant to make sure that their garbage
6 containers are covered.

7 I've been on construction sites and I've
8 seen how some of the workers just, they eat
9 something that they got from the catering truck,
10 and the litter goes on the ground. Crows and
11 gulls are egg predators that are a matter of
12 concern because of the nesting birds in the
13 adjacent marsh.

14 And having food waste available will be
15 an attractant to these predators. So that I would
16 hope that the plan would take into account keeping
17 food garbage covered so that they won't be
18 attracted to this area of the marsh.

19 Thank you.

20 HEARING OFFICER FAY: Thank you. Mr.
21 Caswell or Mr. Greenberg -- Dr. Greenberg, is
22 there any requirement that affects that?

23 DR. GREENBERG: There certainly is. And
24 that would be part of the CPM's review of the
25 project operations. Within the solid waste

1 management plan and certainly within LORS there
2 are requirements that address that very issue.

3 If the project owner complies with all
4 applicable LORS, then there would not be a
5 problem. So it's really a matter of them
6 complying, and with the CPM enforcing.

7 HEARING OFFICER FAY: So, they're not
8 allowed -- the construction crews aren't allowed
9 to throw their wrappers or their half-eaten
10 sandwiches around the site?

11 DR. GREENBERG: That's correct, sir.

12 HEARING OFFICER FAY: Want to get it
13 clear. Any other comments on waste?

14 All right. We'll now move to the topic
15 of worker safety. Mr. Wheatland.

16 MR. WHEATLAND: We have in the area of
17 worker safety the testimony of Mr. Urry in exhibit
18 2. And we also have additional testimony on the
19 topic of worker health and safety by Mr. Urry as
20 set forth in exhibit 3.

21 There is one outstanding issue that we
22 have raised in the addendum. This concerns the
23 proposed worker safety condition number three,
24 which is set forth on page 4.14-13. This
25 condition was originally discussed with staff

1 during the worker health and safety workshop, a
2 publicly noticed workshop, which was held in
3 November of 2001.

4 At that time Calpine indicated that
5 additional risk assessment analysis had been
6 performed to demonstrate that risks associated
7 with the diesel emissions were below the threshold
8 of significance, and therefore we requested that
9 this risk assessment results be submitted -- oh,
10 I'm sorry -- and staff asked that we submit those
11 risk assessment results for review to determine
12 whether or not this condition needed to be
13 contained in the FSA.

14 We have now provided staff with
15 additional information regarding this risk
16 assessment, and therefore we believe we have
17 provided the necessary information and would be
18 requesting that the worker safety condition number
19 three be deleted.

20 And with that explanation, I would move
21 into evidence the testimony of Mr. Urry as set
22 forth in exhibits 2 and 3 on this subject.

23 HEARING OFFICER FAY: Any objection?
24 All right, we receive the testimony of Mr. Urry
25 into the record. And move to the staff.

1 MR. RATLIFF: Staff witness again is Dr.
2 Greenberg, who has been sworn. His testimony is
3 in exhibit 1. And I would like him to summarize
4 his testimony briefly and respond to the comment
5 from counsel for the applicant.

6 DR. GREENBERG: Thank you. In response
7 to counsel for the applicant, the applicant is
8 quite correct that at the November workshop they
9 indicated that they would provide additional
10 modeling data to show a separation out of the
11 particulate matter from combustion sources, which
12 is the diesel construction equipment versus the
13 non combustion sources.

14 Unfortunately, as the applicant has
15 admitted, they failed to do that until just this
16 morning. I did have an opportunity to review
17 their modeling results, and I concur that it is
18 accurate.

19 I looked at the input and the output
20 files, and this is a standard EPA-approved air
21 dispersion model, also using the standard AB-2588
22 health risk assessment software modeling program.

23 And so I concur with their request, and
24 that it would not be necessary to have any
25 proposed condition of certification WorkerSafety-3

1 because the risks to the workers from diesel
2 exhaust are below the level of significance.

3 HEARING OFFICER FAY: Thank you. And,
4 Dr. Greenberg, just so people understand, you
5 differentiated between diesel particulate and
6 other particulate.

7 What's an example of other particulate?

8 DR. GREENBERG: The other particulates
9 would be the PM10, the PM2.5 as a result of
10 fugitive dust emissions. And those are addressed
11 in the air quality section.

12 In the worker safety section we were
13 addressing the health risks to workers as a result
14 of particulates from diesel construction
15 equipment. And the risks here now are below a
16 level of significance, so it's not necessary to
17 model -- or to --

18 HEARING OFFICER FAY: Fugitive dust is
19 just the kind of dust that the tractors, et
20 cetera, kick up during construction, is that
21 right?

22 DR. GREENBERG: That's correct, and just
23 either moving around by virtue of their tires
24 kicking up some dust; that's the PM10 and PM2.5.
25 That is not addressed here. That is addressed in

1 air quality. And there is a requirement, a
2 proposed condition of certification requiring
3 monitoring for PM10.

4 Now the diesel exhaust would still be
5 part of the PM10 monitoring, but it would be a
6 very very small fraction of that, probably 1
7 percent of less. So, this was a specific
8 condition addressing the workers on the site,
9 which now is not necessary.

10 HEARING OFFICER FAY: Okay. Thank you.

11 MR. RATLIFF: We would move the
12 testimony into evidence.

13 HEARING OFFICER FAY: Any objection to
14 receiving Dr. Greenberg's testimony? All right,
15 received at this time.

16 Is there any public comment on worker
17 safety?

18 MS. GEORGE: Yeah, I'd like to make a
19 comment on the process of having something offered
20 to Dr. Greenberg this morning and have him review
21 that this morning and make a ruling before this
22 hearing. I think that this shows that this
23 process is not a due process.

24 HEARING OFFICER FAY: Okay. I'm going
25 to let Dr. Greenberg respond because I know that

1 most of the time staff does not accept things on
2 such short notice. Why did you think that it was
3 acceptable to do so in this situation?

4 DR. GREENBERG: Simply because I believe
5 the applicant made an honest mistake in thinking
6 that they had docketed the information and had
7 gotten it out to the public, as well as to me.
8 And they had not.

9 And they showed it to me this morning
10 and asked if I would be willing to testify about
11 it, as an expert, for the CEC, in support of their
12 request to remove worker safety proposed
13 certification number three.

14 Certainly if that's something that the
15 Committee would like to delay to give the public
16 an opportunity to review, staff would have no
17 problem with that.

18 HEARING OFFICER FAY: Well, this is a
19 modeling document, is that correct?

20 DR. GREENBERG: Yes, it is.

21 HEARING OFFICER FAY: And you were able,
22 with your expertise you were able to determine
23 that it -- in the few minutes you had to look at
24 it, that it supported applicant's contention that
25 worker 3 could be deleted?

1 DR. GREENBERG: Yes, indeed. If one has
2 the experience that I have in looking at modeling
3 input and output files, one can go right away to
4 the relevant pages and look to see what the input
5 and the output files were.

6 And I also noticed that this was indeed
7 run in November of 2001. So, I believe the
8 applicant when they say that they ran the
9 modeling; they just forgot to docket it. Because
10 you can't change the date on it. It would be very
11 difficult to change the date on that, as if they
12 had run it today or yesterday and didn't run it in
13 November. You just can't do that.

14 Also, there was a fax page attached to
15 it that had a date on it, as well. So I
16 ascertained that they were telling the truth.
17 They actually did this in November; they just
18 forgot to send it to me, or docket it.

19 MR. WHEATLAND: If I could just add,
20 please. What Dr. Greenberg said is exactly right;
21 is that the analysis was done last November. It
22 was discussed in the workshop. What we didn't
23 provide it until this morning was the backup
24 modeling, all the data that supports the numbers
25 that were generated, so that he could confirm

1 that, in fact, the modeling that we did and the
2 manner in which we did it, did result in an
3 accurate result.

4 And that was the information that we
5 provided this morning.

6 HEARING OFFICER FAY: So this piece of
7 paper showing modeling is just evidence to support
8 the arguments that had already been considered --

9 MR. WHEATLAND: That's what was provided
10 this --

11 HEARING OFFICER FAY: -- taken into --

12 MR. WHEATLAND: -- morning, that's
13 correct.

14 HEARING OFFICER FAY: All right, thank
15 you. Okay, we're going to take a ten-minute break
16 now. And we'll return to address the topic of
17 facility design.

18 (Brief recess.)

19 HEARING OFFICER FAY: Okay, we're going
20 to continue taking evidence on the topic of
21 facility design. And, Mr. Wheatland, do you have
22 testimony on that?

23 MR. WHEATLAND: Yes, we do. Our
24 testimony is set forth in exhibit 2 and is
25 sponsored by James Dunstan. And we would move

1 that this testimony be received into evidence.

2 HEARING OFFICER FAY: Any objection?

3 All right, so moved.

4 Mr. Ratliff, could you just briefly
5 explain to us what that means, facility design,
6 before you move your testimony?

7 MR. RATLIFF: Well, I think the term is
8 somewhat self explanatory. It's basically a
9 description of the physical features of the
10 facility and the layout, what components will be
11 there. And what requirements there are that would
12 assure the engineering integrity of the plant.

13 HEARING OFFICER FAY: So, would this
14 include building code standards --

15 MR. RATLIFF: Yes.

16 HEARING OFFICER FAY: -- for this
17 earthquake zone, et cetera?

18 MR. RATLIFF: Yes, absolutely.

19 HEARING OFFICER FAY: Okay. All right.
20 Go ahead with your testimony.

21 MR. RATLIFF: Yes, the staff has
22 submitted by declaration the testimony of Shahab
23 Khoshmashrab and Steve Baker and Al McCuen on
24 facility design.

25 And we would move that at this time.

1 HEARING OFFICER FAY: Is there any
2 objection? Okay, so moved.

3 Any comments on facility design? Okay,
4 I see no indication, so we'll move on to the
5 topics of geology and paleontology. These are the
6 impacts which the project, especially during
7 construction, could have on geologic and
8 paleontologic resources. Mr. Wheatland.

9 MR. WHEATLAND: Our testimony on geology
10 and paleontology is set forth in the testimony of
11 Tom Stewart in exhibit 2. We would move that this
12 testimony be received into evidence.

13 HEARING OFFICER FAY: Any objection?
14 All right, so moved.

15 And, Mr. Ratliff.

16 MR. RATLIFF: The staff witness
17 testimony is in exhibit 1; it's provided by Neal
18 Mace. And we move it at this time.

19 HEARING OFFICER FAY: Any objection?
20 All right, so moved.

21 And now is there any public comment on
22 this topic, geology and paleontology? I see no
23 indication.

24 So we'll move ahead to the topic of
25 power plant efficiency. This has to do with

1 whether or not this particular proposed power
2 plant will use valuable resources like fuel in an
3 efficient manner. Mr. Wheatland.

4 MR. WHEATLAND: Our testimony on power
5 plant efficiency is set forth in the testimony of
6 James M. Dunstan in exhibit 2. We would move that
7 this testimony be received into evidence.

8 HEARING OFFICER FAY: So moved. Mr.
9 Ratliff.

10 MR. RATLIFF: Yes, the staff witness for
11 power plant efficiency is Shahab Khoshmashrab, and
12 we would move his testimony at this time.

13 HEARING OFFICER FAY: All right, so
14 moved.

15 Any comments from the public on
16 efficiency?

17 MS. GEORGE: Yes, I have a comment on
18 efficiency of power plants. The use of valuable
19 resources issue is important now, and it's going
20 to be even more important as time goes on.

21 Natural gas is not only something that
22 we can burn, it's something that is used for all
23 sorts of other products, which we may need a lot
24 more than we need this power from these plants,
25 because you can produce this power in other ways,

1 including producing energy efficiency, which would
2 make it unnecessary to have this power plant at
3 all. But also it is possible to have renewable
4 energy in this area that would supply all of the
5 megawatts that this power plant provides and more.

6 And we believe that it is unconscionable
7 to use the resources of the earth like natural gas
8 in such an unheeding way.

9 HEARING OFFICER FAY: Okay, thank you.
10 Any other comments on efficiency?

11 All right, then we'll move to power
12 plant reliability. Mr. Wheatland.

13 MR. WHEATLAND: The applicant's
14 testimony on power plant reliability is also
15 sponsored by Mr. Dunstan in exhibit 2. And we
16 would move that it be received into evidence.

17 HEARING OFFICER FAY: So moved. Mr.
18 Ratliff.

19 MR. RATLIFF: The staff witness on power
20 plant reliability is Shahab Khoshmashrab. And we
21 would move his testimony into evidence at this
22 time.

23 HEARING OFFICER FAY: So moved. Is
24 there any comments on power plant reliability?

25 Mr. Caswell, am I correct that that has

1 to do with whether or not the public can depend on
2 this facility as sort of advertised by the
3 applicant, that this would be 600 reliable
4 megawatts?

5 MR. CASWELL: Yes, correct. This
6 reliability as well as efficiency in facility
7 design kind of tie all in together as you see the
8 same staff person reviewed those three areas for
9 continuity to that.

10 And that over this review that the staff
11 has concluded that this project will provide
12 adequate level of reliability.

13 HEARING OFFICER FAY: Okay, thank you.
14 Now we'll move to the topic of alternatives. And
15 this --

16 MS. GEORGE: Was reliability a separate
17 topic?

18 HEARING OFFICER FAY: I'm sorry, yes.
19 And if you have --

20 MS. GEORGE: Okay. Yeah, I have a
21 comment on reliability.

22 In a blackout which occurred in August
23 of the same year that power was deregulated in
24 California, in 1996, there were many areas of the
25 state, the grid went down. But the places where

1 it did not go down turned out that there were
2 renewable energy resources that provided the
3 measure of reliability.

4 This is the reason why renewable energy
5 got any funding after deregulation was because
6 even the Legislature recognized at that time that
7 renewable energy provides a measure of reliability
8 that no centralized power plant can provide.

9 HEARING OFFICER FAY: Thank you. Any
10 other comments on reliability?

11 Okay, alternatives. This is a topic
12 that is required for review under CEQA, under the
13 California Environmental Quality Act. And the
14 applicant must submit alternatives to technology,
15 alternatives to the site location, and the staff
16 must analyze the presentation of those
17 alternatives for feasibility and at a survey level
18 for their environmental impacts.

19 Mr. Wheatland, do you have testimony on
20 that?

21 MR. WHEATLAND: Yes. And, indeed, the
22 applicant did submit a thorough discussion of
23 alternatives when it filed the AFC 11 months ago.
24 That has been evaluated by the staff and discussed
25 in public workshops.

1 Our testimony on this subject is
2 sponsored by Mr. Davy in exhibit 2. And I would
3 move that this be received into evidence.

4 HEARING OFFICER FAY: All right, so
5 moved. And, to the staff.

6 MR. RATLIFF: Staff witness is Dr.
7 Suzanne Phinney. And we would move her testimony
8 by declaration into evidence at this time.

9 HEARING OFFICER FAY: Okay. So moved.

10 Mr. Caswell, do you have anything to add
11 to the summary that I gave as to what this topic
12 means?

13 MR. CASWELL: The conclusions on this
14 alternatives were that there were five alternative
15 sites reviewed. And staff looked closely at those
16 for the overall benefits to the public or overall
17 project benefits.

18 And staff does not believe that the
19 alternative technologies or sites would present a
20 benefit over the current project in front of the
21 Commission.

22 HEARING OFFICER FAY: Okay. Thank you.
23 Any comments, then, on alternatives?

24 MS. GEORGE: Yes, I do have a comment on
25 alternatives. I don't, unfortunately, have the

1 benefit of having been to the workshops and seen
2 all of the testimony that has been discussed
3 today. I just would like to ask whether there was
4 a no-project alternative included?

5 MR. RATLIFF: Yes.

6 MS. GEORGE: There was a no-project
7 alternative. And was a solar thermal power plant
8 included?

9 MR. RATLIFF: I'm sorry?

10 MS. GEORGE: Solar thermal power plant?

11 MR. RATLIFF: There was a discussion of
12 other technological alternatives, yes. Which
13 included use of solar, biomass, geothermal and
14 wind technologies.

15 MS. GEORGE: Was it solar PV or solar
16 thermal?

17 MR. RATLIFF: I don't think the
18 distinction is made. It's talking about in terms
19 of solar generation, which can occur, of course,
20 by PV, but also can occur by other methods, such
21 as the one that has been employed in plants that
22 have been sited in the California Mojave.

23 MS. GEORGE: Was there a discussion of a
24 hybrid plant?

25 MR. RATLIFF: No.

1 MS. GEORGE: Was there a discussion of
2 distributed generation?

3 MR. CASWELL: Not in this section.
4 Also, on your question on was there -- there was a
5 geothermal, solar separate from wind, separate
6 from biomass and hydroelectric.

7 MS. GEORGE: A geothermal solar?

8 MR. CASWELL: Geothermal power as well
9 as solar.

10 MS. GEORGE: Okay.

11 HEARING OFFICER FAY: That's on --

12 MS. GEORGE: I'm referring to solar
13 thermal specifically, rather than geothermal.

14 MR. CASWELL: Solar thermal.

15 MS. GEORGE: Yes.

16 PRESIDING MEMBER KEESE: Are you aware
17 of a solar thermal electric generating facility?

18 MS. GEORGE: Yes. Are you?

19 PRESIDING MEMBER KEESE: Not of the
20 megawatts we're talking about here.

21 MS. GEORGE: Excuse me?

22 PRESIDING MEMBER KEESE: To produce 500
23 megawatts? Do you know what size the solar
24 thermal you're thinking of is?

25 MS. GEORGE: I can't give you the exact

1 figures on it, no. But I can produce a witness
2 who can.

3 MR. CASWELL: We do have that in our
4 analysis.

5 MS. GEORGE: You do have solar thermal?

6 MR. CASWELL: Solar thermal projects
7 require approximately five acres per megawatt,
8 therefore, 600 megawatts would require
9 approximately 3000 acres.

10 HEARING OFFICER FAY: And can you give
11 us a citation for that?

12 MR. CASWELL: It's under alternatives,
13 under 6-3, page 6-3.

14 MS. GEORGE: I'd like to also question
15 whether or not there has been an affirmation of
16 the need for this power at all. Has that been
17 discussed?

18 HEARING OFFICER FAY: That's an
19 interesting topic that you bring up, because under
20 current law the Commission is not authorized to
21 examine need for electricity.

22 In the past that was one of the things
23 that we were required to examine under the Warren
24 Alquist Act.

25 In this new, quote, deregulated

1 situation, need is not a factor that's examined by
2 the Commission by law.

3 MS. GEORGE: My understanding is that
4 the CEQA requires it, whether or not the
5 deregulation law requires it. And it is still in
6 the PUC code that there needs to be a needs
7 analysis.

8 HEARING OFFICER FAY: Well, of course,
9 we operate under the Warren Alquist Act, which is
10 not the PUC code. We also operate under CEQA.

11 Mr. Ratliff, do you want to address
12 that?

13 MR. RATLIFF: Well, I think Mr. Fay's,
14 of course, correct that the --

15 MS. GEORGE: Excuse me, what was your
16 name?

17 MR. RATLIFF: My name is Mr. Ratliff,
18 Richard Ratliff.

19 The Warren Alquist Act was amended to
20 remove any requirement that a power plant be
21 needed in the sense that the statute had
22 previously required.

23 Nevertheless, the analysis does include
24 a no-project alternative requirement, which is
25 what I think you're referring to. It does include

1 that discussion. And it does, in fact, include a
2 discussion under transmission system engineering
3 which indicates that the project is needed for
4 reliability purposes.

5 MS. GEORGE: But it is not needed for
6 the power?

7 MR. RATLIFF: That's what it is needed
8 for, yes.

9 MS. GEORGE: You said it was needed for
10 reliability and transmission --

11 MR. RATLIFF: It provides support for
12 energy use in the Bay Area, both in the East Bay
13 and with the expected reconstruction of lines over
14 the San Mateo Bridge, also the Peninsula, as well.

15 HEARING OFFICER FAY: Ms. George, we'll
16 have a witness here later today who will address
17 that under the topic of transmission system
18 engineering. And that is something that Mr.
19 McCuen addressed in his analysis.

20 MS. GEORGE: Well, I'm asking whether we
21 need the power, itself.

22 HEARING OFFICER FAY: Okay, well, the
23 staff has addressed that in terms of the physics
24 of the system, you know, whether the power is
25 required to allow the system to operate

1 efficiently. The system being, you know, the Bay
2 Area grid. That's how we address that, as I
3 understand.

4 So, after you hear what he has to say,
5 if you still have some comments you can make them
6 then.

7 MS. GEORGE: Well, I think that the
8 transmission is one of the issues, but I think
9 that the overall issue about the lies that the
10 people of California endured for the last couple
11 of years on the fact that there was a great need
12 for new power, and great need for new power
13 plants, that has been exposed as a complete lie.

14 The President of the Public Utilities
15 Commission admitted before Congress that we did
16 not need new power plants. We did not need more
17 power. What we needed was some honest energy
18 companies, which Calpine is not.

19 And apparently very few, if any, of the
20 generators who are operating in California are
21 honest generators. And whether or not this power
22 plant is -- whether the power from this power
23 plant is or is not needed, it also is not
24 necessarily going to be used, or even sold in this
25 area. Because under the rules of deregulation

1 this power can be sold anywhere. It can go
2 outside of the state.

3 Or the power owner can shut down the
4 power plant whenever it feels like it, and
5 withhold power in order to drive up prices, which
6 is what happened last year.

7 And therefore, we believe that this
8 power plant, if we need the power this power plant
9 will not necessarily give us the power. And if we
10 don't need the power, then why are we building new
11 power plants.

12 PRESIDING MEMBER KEESE: Thank you. And
13 that's a fair presentation to the Committee. What
14 you've heard from staff here is that the power is
15 needed. What you've heard from staff is that they
16 will have a witness in a later part who will give
17 testimony as to why the power is needed in this
18 area.

19 You've expressed your opinion that we
20 don't need any power. I would just recommend you
21 check the California Energy Commission website
22 where we have indicated we have a critical need
23 for additional power in California. And --

24 MS. GEORGE: We may or may not have a
25 critical need, but these power plants will not

1 necessarily provide that power, isn't that
2 correct?

3 PRESIDING MEMBER KEESE: But that's --

4 MS. GEORGE: Is that correct?

5 PRESIDING MEMBER KEESE: -- it's not a
6 standard by which we will make a decision in this
7 case --

8 MS. GEORGE: You mean you are ignoring
9 the facts --

10 PRESIDING MEMBER KEESE: -- because
11 the --

12 MS. GEORGE: -- in this case that
13 Calpine does not have to sell this power in this
14 region?

15 PRESIDING MEMBER KEESE: You've heard
16 that staff will indicate this power is needed;
17 this power plant's production is needed. But as
18 far as this Committee is concerned, in siting this
19 power plant, that isn't -- the need for this power
20 plant at this site was something that we did
21 previously, and it is not a standard anymore.
22 It's not one of the listed criteria --

23 MS. GEORGE: It's not a --

24 PRESIDING MEMBER KEESE: -- you have
25 here.

1 MS. GEORGE: -- standard anymore --

2 PRESIDING MEMBER KEESE: Even though, in
3 this case, staff has told you they will testify
4 this power plant is needed.

5 MS. GEORGE: So the Energy Commission
6 does not recognize the need to assess need
7 anymore?

8 PRESIDING MEMBER KEESE: The Legislature
9 gave us a standard now, which is if -- in
10 shorthand, which is if a developer cares to invest
11 the \$500 million in building a power plant, that
12 that is a demonstration that there probably is a
13 need out there, so we shouldn't look at that
14 aspect.

15 If they're willing to put the money up,
16 that meets that level of need. We will see that
17 this power plant is sited so that it has no
18 negative impacts on the community or on the power
19 system.

20 MS. GEORGE: I have one more question,
21 whether or not you address the issue --

22 HEARING OFFICER FAY: Well, we're not
23 taking questions.

24 PRESIDING MEMBER KEESE: This really
25 shouldn't be questions. We've been quite liberal

1 here --

2 MS. GEORGE: The energy efficiency, I
3 wanted to find out whether energy efficiency
4 options have been addressed as an alternative.

5 HEARING OFFICER FAY: And what I have to
6 do is refer you to the final staff assessment,
7 because it does look at the efficiency of the
8 power plant. Now, if you're talking about the
9 efficiency of using an alternative technology --

10 MS. GEORGE: No, I'm talking about
11 energy efficiency in the Bay Area, which would
12 relieve us of the need for power, extra power
13 plant. There are lots of opportunities for energy
14 efficiency that have not been addressed. They
15 could be accomplished for a great deal less money
16 than \$500 million for this power plant.

17 PRESIDING MEMBER KEESE: But not in a
18 siting process for a power plant.

19 MS. GEORGE: That is not included in
20 your siting process, the possibility --

21 MR. RATLIFF: No, actually it is.

22 PRESIDING MEMBER KEESE: Well, the --

23 MS. GEORGE: -- of energy efficiency?

24 PRESIDING MEMBER KEESE: -- the analysis
25 of it is, but how we --

1 MS. GEORGE: I think you're mistaken, --

2 PRESIDING MEMBER KEESE: -- how we
3 introduce energy efficiency into the Bay Area is
4 not --

5 MS. GEORGE: -- Commissioner.

6 PRESIDING MEMBER KEESE: -- in front of
7 this Committee.

8 MS. GEORGE: I think it should be.

9 Yeah, and you do, too, don't you?

10 MR. RATLIFF: It is in the analysis.

11 MS. GEORGE: It's in the analysis
12 because it's in the law, that you're required to
13 look at energy efficiency as one of the --

14 MR. RATLIFF: No, actually the law --

15 MS. GEORGE: -- the alternatives.

16 MR. RATLIFF: Actually, interestingly
17 enough, it's actually contrary through the law
18 that we address it, but we address it in any case.
19 The law says that we should not, in fact, analyze
20 energy efficiency as an alternative to power
21 plants.

22 But the staff has done so, in any case.

23 MS. GEORGE: Which law is it that says
24 we should not address energy efficiency --

25 HEARING OFFICER FAY: I'm sorry, Ms.

1 George, this is not a time to cross-examine staff
2 counsel. And you're getting into a lot of
3 discovery items.

4 What we do allow is a chance for the
5 public to make comments. And we have your
6 comments on the record. If you want to talk to
7 some of the consultants afterwards, you may be
8 able to get the answers to these questions. But
9 during the hearing time --

10 MS. GEORGE: No, I wanted to establish
11 that for the record, sir.

12 HEARING OFFICER FAY: Okay, that's fine.
13 We're now going to move to general conditions. I
14 don't think the applicant has offered testimony in
15 this area, is that correct?

16 MR. WHEATLAND: That's correct.

17 HEARING OFFICER FAY: All right. Mr.
18 Ratliff, what are you offering? And, please,
19 between you and Mr. Caswell, describe for the
20 audience what we mean by general conditions. Why
21 is it in the FSA.

22 MR. RATLIFF: General conditions are
23 included in this -- these are proposed general
24 conditions which we hope that the Commission will,
25 itself, adopt.

1 But, we have recently decided that there
2 are certain kinds of conditions which are broadly
3 applicable to all of the facilities that we site.

4 And so what staff is doing here is
5 recommending a certain set of conditions which are
6 rather generic in nature, and have been compiled
7 into one place.

8 This is not, I think, in any real sense,
9 testimony. It is essentially proposed conditions
10 that relate to the facility, itself, that I think
11 are acknowledged to be appropriate for these kinds
12 of projects.

13 HEARING OFFICER FAY: So this is just
14 part of the way we do business in enforcing
15 applicants to comply with a certain set of rules
16 and reporting?

17 MR. RATLIFF: Correct.

18 HEARING OFFICER FAY: Thank you. So, --

19 MR. RATLIFF: But it's been filed as
20 though it were testimony. I don't know if I
21 should move it as though -- it is testimony, but
22 in fact, it has no real testimonial contents, --

23 HEARING OFFICER FAY: Why don't we
24 receive it as --

25 MR. RATLIFF: -- though.

1 HEARING OFFICER FAY: -- as such. And
2 we can worry about the fine points later.

3 MR. RATLIFF: It is described under the
4 name of Jeri Scott. And is part of exhibit 1.

5 HEARING OFFICER FAY: Okay. Thank you.

6 Now we're going to shift gears a little
7 bit. Things get a little more interesting,
8 perhaps a lot more interesting.

9 We are going to move into some topics
10 that actually have more controversy. And the
11 first of these is visual resources. And this has
12 to do with the effect of the appearance of the
13 plant on the local environment.

14 So, Mr. Wheatland.

15 MR. WHEATLAND: All right. To begin the
16 discussion I'd like to, if I could, divide the
17 discussion into two parts.

18 The first part concerns the visual
19 resources of the project, itself. And when I
20 refer to the project, I'm referring to the
21 facility as it's traditionally considered under
22 the Warren Alquist Act, the plant and related
23 facilities: the power plant, the associated
24 linears to the power plant.

25 And the staff has undertaken a visual

1 resource analysis of the impacts of the power
2 plant and related facilities. And it's my
3 understanding that they have concluded that all of
4 the impacts of the proposed power plant can be
5 mitigated to a level of insignificance.

6 And as to the staff's proposed
7 conditions of certification regarding the power
8 plant, itself, I believe there's concurrence
9 between the staff and the applicant. And when you
10 hear later from the staff, I understand that they
11 have several additional modifications to their
12 testimony regarding the visual impacts of the
13 power plant project, itself. And we concur with
14 these additional revisions.

15 The second issue in visual resources
16 concerns the relocation of the KFAX radio towers
17 that are currently located on the proposed project
18 site.

19 On May 24, 2001, the City of Hayward
20 granted a conditional use permit for the
21 relocation of the KFAX towers from the Russell
22 City project site to a site owned by the City and
23 approved. The City also approved at that time a
24 mitigated negative declaration, which, in effect,
25 concluded that there were no significant adverse

1 impacts from the relocation of the radio towers to
2 the new site.

3 The tower relocation also requires
4 approval from the Federal Aviation Administration
5 and the Federal Communications Commission. And
6 applications have been filed by the station owner
7 seeking these approvals, as well.

8 Although the negative declaration had
9 been issued, the Commission Staff has undertaken
10 an environmental analysis of the KFAX radio tower
11 relocation. That analysis is set forth in what I
12 believe is appendix B to the final staff
13 assessment.

14 That environmental analysis concludes
15 that with one exception it basically confirms the
16 findings of the negative declaration that there
17 are no significant adverse impacts.

18 There is one area, though, in which the
19 environmental analysis differs from the negative
20 declaration in that the staff concludes that there
21 would be a significant adverse visual impact from
22 the relocation of the radio towers. The applicant
23 differs from the staff on that issue.

24 And what we would like to propose today,
25 jointly with the staff, is that in order to save

1 time in today's hearings and to avoid lengthy
2 litigation of this issue, we would like to propose
3 to the Committee a set of stipulated facts
4 regarding the visual impacts of the KFAX radio
5 tower relocation.

6 This was docketed, I believe, Tuesday.
7 Does the Committee have copies of this
8 stipulation? I have copies if you need them.

9 HEARING OFFICER FAY: We need one more
10 copy.

11 (Pause.)

12 MR. WHEATLAND: And I have additional
13 copies for members of the audience that wish to
14 have it.

15 (Pause.)

16 MR. WHEATLAND: If I could ask, please,
17 that the stipulated facts regarding the visual
18 impacts of the KFAX radio tower relocation be
19 marked for identification.

20 HEARING OFFICER FAY: That will be
21 exhibit 4.

22 MR. WHEATLAND: So what we would propose
23 is to offer these stipulated facts. And if these
24 stipulated facts are received by the Committee
25 into evidence, this would avoid the need for the

1 applicant to cross-examine the staff's witness on
2 visual resources, and I believe vice versa.

3 So, at this time I'd also like to point
4 to our testimony, which is set forth in exhibit 2.
5 This is the testimony of Tom Priestley. And I
6 would move that this testimony, which also briefly
7 addresses the issue of the radio tower relocation,
8 be received into evidence.

9 HEARING OFFICER FAY: Any objection?

10 MR. RATLIFF: No.

11 HEARING OFFICER FAY: So moved. And
12 that concludes your presentation?

13 MR. WHEATLAND: That would conclude my
14 introduction of this issue.

15 HEARING OFFICER FAY: All right. I'll
16 just take a moment to explain. That parties do
17 disagree on this issue as Mr. Wheatland has
18 indicated. But in the interests of saving time
19 have tried to narrow the issue down to a clear
20 statement of the things that they agree on, so
21 that the Committee can then just focus on the
22 areas of disagreement.

23 Mr. Ratliff for the staff.

24 MR. RATLIFF: Yes, we have stipulated to
25 these facts. And we agree that with this

1 stipulation the aim was to try to shorten the time
2 that this topic would take to adjudicate.

3 What we would propose to do is have the
4 witnesses summarize the testimony and provide the
5 reasons for the conclusions that they reached.
6 And let the Committee ask any questions that it
7 may have to draw its own conclusions. And have it
8 be submitted.

9 HEARING OFFICER FAY: Okay, before we
10 get to Mr. Knight, then, I'll just ask, Mr.
11 Wheatland, did you want Mr. Priestley to
12 summarize, or do you --

13 MR. WHEATLAND: He's available to do so
14 if the Committee desires.

15 HEARING OFFICER FAY: Okay. Yeah, let's
16 have him sworn in. Mr. Priestley.

17 (Pause.)

18 MR. WHEATLAND: I indicated to Mr.
19 Priestley that the testimony that we'll be
20 offering here addresses just the KFAX tower.

21 HEARING OFFICER FAY: Right. And,
22 Mr. Priestley, I think we do have the ability to
23 put up graphics if you feel a need to.

24 //

25 //

1 Whereupon,

2 THOMAS PRIESTLEY

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 DR. PRIESTLEY: I'm wondering if --

7 DIRECT EXAMINATION

8 BY MR. WHEATLAND:

9 Q Okay, Mr. Priestley, first let me just
10 ask you, I'd like to refer you to your testimony
11 on visual resources in exhibit 2. Was that
12 testimony prepared by you?

13 A Yes, it was.

14 Q Now, are there any changes or
15 corrections to that testimony at this time?

16 A No, there are not.

17 Q And is that testimony true and correct
18 to the best of your knowledge and ability?

19 A Yes, it is.

20 Q All right. Could you please, for the
21 Committee, briefly summarize your testimony in
22 that exhibit regarding the visual impacts of the
23 radio tower relocation?

24 A Yeah. The bottomline is that I have
25 made a careful analysis of the potential effects

1 of the relocated radio tower on the visual quality
2 and character of the area on and around the
3 relocation site. And have determined that
4 although the radio towers would be visible, they
5 would not create an impact that would be
6 significant under CEQA standards.

7 Q And can you just briefly state what, in
8 your opinion, would -- why is it not significant
9 under CEQA standards?

10 A Okay. There are three viewpoints that
11 were looked at, both in my initial analysis, and
12 then subsequently in the analysis that was
13 conducted by CEC Staff.

14 For two of those viewpoints one is a
15 view from Cogswell Marsh looking back towards the
16 radio towers. Another is a view from Sulfur Creek
17 at the shoreline, looking south towards the
18 towers.

19 In both of those cases staff and I agree
20 that the impacts of the relocated radio towers
21 would be less than significant.

22 So the one viewpoint where there is
23 disagreement has to do with the view looking
24 towards the radio towers as you're driving along
25 or traveling along West Winton Avenue at the

1 entrance into the shoreline area.

2 And I --

3 HEARING OFFICER FAY: Excuse me, Mr.
4 Priestley. Does that have a KOP number assigned
5 to it?

6 DR. PRIESTLEY: That would be KOP-1 in
7 staff's analysis. And, you know, I don't have a
8 copy of that figure right here with me. I'm
9 wondering if Dr. Davy is here. I know that we
10 have brought copies of all of those things. It
11 would probably be very very useful if we could put
12 that up for everyone to look at while I'm talking.

13 PRESIDING MEMBER KEESE: What I'm
14 looking at, for whoever can help me out here, is I
15 am looking at the view from KOP-1, it's called
16 VIS-4A, which is the existing view over the
17 parking lot.

18 DR. PRIESTLEY: Oh, I'm sorry, this
19 would be KOP-1 in the appendix. As you recall --

20 PRESIDING MEMBER KEESE: So it's a
21 different -- okay, I --

22 DR. PRIESTLEY: It's appendix, is it
23 appendix B?

24 MR. WHEATLAND: Yes, appendix B. At the
25 very back of the FSA.

1 PRESIDING MEMBER KEESE: Okay.

2 HEARING OFFICER FAY: I've handed Mr.
3 Priestley a document from the staff assessment,
4 the final staff assessment, appendix B. Why don't
5 you identify the document.

6 DR. PRIESTLEY: Okay. Just to put,
7 yeah, put all of this into some kind of
8 perspective. First of all, the site that we're
9 talking about is a piece of the Old West Winton
10 Landfill. And that's located right here on this
11 map.

12 The viewpoints that we were referring
13 to, the one that is in dispute is viewpoint 1,
14 which is along West Winton Avenue as you are
15 driving into the parking lot and staging area.

16 The viewpoint --

17 MR. WHEATLAND: Mr. Priestley, if I can
18 just interrupt for one second, please. For the
19 Committee's benefit the visual simulation of the
20 radio towers from this KOP is reflected in figure
21 6 to that supplement in appendix B.

22 DR. PRIESTLEY: And so the viewpoints on
23 which there is agreement between my analysis and
24 staff's analysis are viewpoints 2, which is on the
25 bridge over Cogswell Marsh, and is generally

1 representative of the shoreline area to the south-
2 southwest of the project site.

3 And the other viewpoint is viewpoint 3,
4 which is at the point where Sulfur Creek goes into
5 the Bay.

6 Now, I'm wondering if I could have a
7 copy of our originally submitted photo and
8 simulation of the view from KOP-1 because staff
9 has produced the simulations as 11-by-17's, and I
10 think that our overhead projector can only
11 accommodate 8.5-by-11's.

12 (Discussion off the record.)

13 DR. PRIESTLEY: Okay, I'd like to start
14 with the existing view of the existing condition.
15 I apologize that what we're seeing isn't as vivid
16 or as clear as what we would like.

17 But I think kind of the crux of my
18 analysis is that this view is a view of a
19 landscape which is now already a highly altered
20 landscape. It has been, you know, quite visibly
21 modified by first of all, the raised approximately
22 25-foot-high mound, which is the former landfill.

23 There are buildings that are part of a
24 East Bay Park service yard, kind of in the far end
25 of the foreground. And there are a number of

1 quite visually prominent utility structures in
2 this view, as well.

3 So, my professional assessment of this
4 view is that, first of all, it's character is one,
5 again, one that is highly modified, and that its
6 visual quality is not particularly high. One
7 would have to say that the visual quality is lower
8 than average,

9 Then --

10 HEARING OFFICER FAY: That was figure 2
11 from the FSA, is that correct?

12 DR. PRIESTLEY: Yes. And my analysis
13 also is that the level of sensitivity of this view
14 is not particularly high because it's part of the
15 transition zone between the adjacent industrial
16 area and the shoreline.

17 That, in fact, when people arrive at the
18 shoreline, your back is to this site, and the
19 orientation is more to the Bay.

20 HEARING OFFICER FAY: And would you
21 describe figure 2 you just reviewed as essentially
22 the baseline --

23 DR. PRIESTLEY: Yes.

24 HEARING OFFICER FAY: -- for the
25 purposes of the CEQA analysis?

1 DR. PRIESTLEY: Yes. And this is a
2 simulation of the project as it would appear after
3 construction. And as you'll note in the testimony
4 that I have submitted, my professional judgment
5 has been that although the towers would be
6 visible, they would not create an impact that
7 would be significant under the CEQA guidelines.

8 HEARING OFFICER FAY: Anything further,
9 Mr. Wheatland?

10 MR. WHEATLAND: No, that completes this
11 witness' testimony. Thank you.

12 HEARING OFFICER FAY: Okay. I
13 understand that because of a stipulation the
14 parties are foregoing cross-examination, but the
15 Committee may have a few questions. I know I have
16 one.

17 Mr. Priestley, in figure 2, you
18 described that as the baseline for the purposes of
19 CEQA. Should we also consider, as part of the
20 baseline for CEQA analysis, the fact that four
21 towers currently exist at the project site? Does
22 that fold into this analysis at all?

23 DR. PRIESTLEY: When you say the four
24 towers, you're referring to the KCTC/KFOY towers?

25 HEARING OFFICER FAY: The towers that

1 are on there that are being removed as a result of
2 the project.

3 DR. PRIESTLEY: Oh, so when you're
4 referring to site are you referring to the power
5 plant project site?

6 HEARING OFFICER FAY: Yeah, the power
7 plant site, the towers that will be removed from
8 the power plant site prior to construction of the
9 power plant, would be or are proposed to be
10 replaced at this former disposal site.

11 DR. PRIESTLEY: And so the question is?

12 HEARING OFFICER FAY: The question is if
13 today somebody can go out to, for instance, the
14 shoreline habitat center and these existing towers
15 are within their view, and those towers will be
16 removed and put further away at the location that
17 you just described, does that factor into this
18 analysis or should it?

19 DR. PRIESTLEY: That's a fact that, yes,
20 can and should factor into the overall analysis;
21 that this environment is one in which things like
22 radio towers already exist and are part of the
23 existing setting.

24 Not only these towers, but the nearby
25 KCTC/KFOY towers, as well.

1 HEARING OFFICER FAY: Okay. Thank you.
2 That's all I have.

3 Thanks, Mr. Priestley, you're excused.

4 All right, Mr. Ratliff, let's turn to
5 your witness. And, Mr. Wheatland, have you moved
6 that testimony?

7 MR. WHEATLAND: Let's see, I didn't
8 check it off, I don't think. So I would move that
9 Mr. Priestley's testimony in exhibit 2 on the
10 subject of visual resources be received into
11 evidence.

12 HEARING OFFICER FAY: Okay. And did he
13 have any additional testimony --

14 MR. WHEATLAND: No, he had no changes or
15 corrections to that.

16 HEARING OFFICER FAY: All right, fine.
17 Any objection? All right, we'll receive that.

18 Mr. Ratliff, your witness.
19 Whereupon,

20 ERIC KNIGHT
21 was called as a witness herein, and after first
22 having been duly sworn, was examined and testified
23 as follows:
24 //
25 //

1 DIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Mr. Knight, did you prepare the staff
4 testimony in exhibit 1 described as visual
5 resources?

6 A I did.

7 Q Is that testimony true and correct to
8 the best of your knowledge and belief?

9 A Yes, it is.

10 Q Do you have any changes to make in it at
11 this time?

12 A I have two changes to conditions of
13 certification.

14 Q You have that in writing, is that
15 correct?

16 A Yes.

17 MR. RATLIFF: It's an errata that we
18 will submit at this time.

19 HEARING OFFICER FAY: Can you identify
20 that and we'll give it an exhibit number.

21 MR. RATLIFF: Yes, it's titled visual
22 resources errata. It's a one-page document.

23 HEARING OFFICER FAY: Okay, that is
24 exhibit 5.

25 //

1 BY MR. RATLIFF:

2 Q Additionally, Mr. Knight, you prepared
3 the supplemental visual analysis for the radio
4 tower relocation, is that correct?

5 A Yes, I did.

6 Q And that is also included in exhibit 1,
7 is that correct?

8 A Yes, it is.

9 Q And we've heard testimony today already
10 concerning the applicant's appraisal of the
11 impacts of that relocation. Could you summarize
12 your conclusions and -- well, actually I don't
13 want to just restrict you to conclusions, but can
14 you summarize your analysis of the impacts of the
15 relocation of the radio towers?

16 A For the analysis of the radio tower
17 relocation staff used the KOPs that were
18 identified by the applicant, the number 1, KOP 1,
19 2 and 3. To KOPs 2 and 3 staff agrees with the
20 applicant that those impacts of the towers viewed
21 from those two locations, KOP 2 is the Cogswell
22 Marsh footbridge about a half a mile away. And
23 then the other KOP 3 is the overcrossing of the
24 slough about .85 miles away.

25 Those two viewpoints, I agree that the

1 impacts would be adverse, but not significant.

2 From those viewpoints you do see existing towers
3 in the vicinity. From KOP 2 you actually do see
4 the existing KFAF towers on the Russell City
5 Energy Center site.

6 And at those distances the towers really
7 recede into the horizon in the background of the
8 East Bay hills.

9 One thing to point out is that in those
10 simulations the towers are depicted as painted
11 gray. And there are no lights depicted on top of
12 those towers. The actual determination of no
13 hazard to air traffic issued by the FAA in January
14 would actually require those towers be painted
15 orange and white with red blinking lights on them.

16 The applicant tower proponent has
17 actually reapplied to the FAA to ask for gray
18 paint and white flashing strobes. But to my
19 knowledge that new determination has not been
20 issued by the FAA.

21 So, as it stands, the requirement is
22 those towers would be painted orange and white,
23 similar to the existing towers on the Russell City
24 Power Plant site.

25 The difference is, in our analysis and

1 the applicant's analysis, is KOP 1, which I didn't
2 necessarily agree with the viewpoint that was
3 selected to represent the existing view conditions
4 photograph and the photosimulation.

5 I'd direct the Committee's attention to
6 figure 3. Figure 3 shows other views available
7 from this area of KOP 1. And the photo labeled
8 number 1 is -- refer back to the earlier
9 photograph that was presented, you see the sheds
10 of the middle ground, the view. This is actually
11 beyond that. This is closer to the actual
12 entrance to the park.

13 And the sign you see at the base of the
14 berm there, which is the landfill, just capped and
15 vegetated with grass and trees, that sign says the
16 Hayward Regional Shoreline Park. So the towers
17 would actually be sitting up on top of that and
18 viewed at a distance of say about 350 feet, as
19 opposed to 1000 feet shown in that figure 2.

20 PRESIDING MEMBER KEESE: May I ask one,
21 try to give me a perspective there. There are
22 currently five KTCT towers?

23 MR. KNIGHT: Yeah, there are five towers
24 owned by the KTCT radio station, which are located
25 from this viewpoint, KOP 1, they're located about

1 a third of a mile to the north.

2 PRESIDING MEMBER KEESE: And those are
3 how tall?

4 MR. KNIGHT: I don't know how tall they
5 are. They're painted gray and I think two of them
6 have flashing white lights on them.

7 PRESIDING MEMBER KEESE: Are they the
8 same substance -- did I read -- the ones that are
9 going to be replaced are needle towers without guy
10 lines?

11 MR. KNIGHT: I don't believe those
12 towers have guy wires on them. I think they are
13 free standing.

14 PRESIDING MEMBER KEESE: So that the
15 current ones are similar to the new ones that are
16 going to be added? I should say the replaced.

17 MR. KNIGHT: They look somewhat similar
18 in appearance. I don't know if they're as tall,
19 because when you're at this viewpoint they're over
20 a third of a mile away and --

21 PRESIDING MEMBER KEESE: My question, I
22 guess, is do we have -- we're removing four from
23 one site to this site where there are currently
24 five? We will have nine?

25 MR. KNIGHT: Yeah, I would characterize

1 it a little bit differently. You're taking four
2 towers at a location that's a mile away from this
3 location and actually in this location you cannot
4 see the existing KFOX towers.

5 PRESIDING MEMBER KEESE: Okay.

6 MR. KNIGHT: You're moving them from a
7 viewpoint about a mile away to a viewpoint about
8 350 feet away from the park entrance.

9 PRESIDING MEMBER KEESE: Okay, now --

10 MR. KNIGHT: Visible in some portions of
11 this area you can see the existing KCTC towers,
12 which is another radio station --

13 PRESIDING MEMBER KEESE: You cannot.
14 So, how far away are they?

15 MR. KNIGHT: They're about a third of a
16 mile away. But from portions of this --

17 PRESIDING MEMBER KEESE: So they're
18 about -- these, the new ones, are 350, and the old
19 ones are 1400 feet?

20 MR. KNIGHT: But the --

21 PRESIDING MEMBER KEESE: Third of a mile
22 or so --

23 MR. KNIGHT: The old ones are, yeah,
24 5260 feet --

25 PRESIDING MEMBER KEESE: Right.

1 MR. KNIGHT: It's about a mile --

2 PRESIDING MEMBER KEESE: Okay, and
3 generally speaking they're about the same size and
4 configuration. They would appear visually
5 different depending on how far away they are?

6 MR. KNIGHT: Yes, from --

7 PRESIDING MEMBER KEESE: That's --

8 MR. KNIGHT: -- if you were standing at
9 KOP -- or I would say at the entrance of the park
10 and looking at the relocated towers, they would
11 appear significantly larger than the towers
12 located a third of a mile away.

13 PRESIDING MEMBER KEESE: Because they're
14 so --

15 MR. KNIGHT: They're 228 feet tall on a
16 30-foot tall landfill or closed landfill, which
17 appears as to be a vegetated berm.

18 PRESIDING MEMBER KEESE: Thank you.

19 HEARING OFFICER FAY: Did you have
20 anything further?

21 MR. KNIGHT: No, essentially that's the
22 difference of opinion is I didn't focus on the
23 viewpoint that was depicted in the photo, and
24 talked more about the experience that would be had
25 by people who actually enter into the park and use

1 the parking staging area, those towers look quite
2 different than what's simulated.

3 And then the fact that they, as a
4 requirement of the FAA, currently, they wouldn't
5 be painted gray. They'd be red and white.

6 HEARING OFFICER FAY: Now, is there any
7 reason to think that the FAA might grant the
8 request since the existing towers that are a third
9 of a mile away are gray?

10 MR. KNIGHT: I spoke with the
11 representative of the FAA and she indicated that
12 it would be something that they -- it's something
13 that they do typically allow, but they would have
14 to do their analysis and determine whether or not
15 it's appropriate for this case.

16 And the situation would be they would
17 allow gray paint with white flashing strobes which
18 would be on during the day and night. But at
19 night it would reduce in intensity.

20 HEARING OFFICER FAY: Mr. Wheatland,
21 this presentation, is it consistent with the
22 stipulated facts that you've entered into?

23 MR. WHEATLAND: Yes.

24 HEARING OFFICER FAY: Okay. So the
25 scope of the disagreement is just the significance

1 of the view from KOP 1 in this case?

2 MR. KNIGHT: Yes.

3 HEARING OFFICER FAY: I just wanted to
4 ask, what about just looking at it from a CEQA
5 analysis point of view. You have a baseline that
6 does include towers currently standing at the
7 proposed project site, and those towers will be
8 relocated to the site that you examined in
9 appendix B, is that correct?

10 MR. KNIGHT: Yes.

11 HEARING OFFICER FAY: Do you take into
12 account the fact that the towers will not be in
13 the viewshed where they are now? That, for
14 instance, people from the habitat center won't
15 have to look at them? Or as close?

16 MR. KNIGHT: I did address that. I
17 think under the scenic vistas discussion. I do
18 note that the towers will be located farther away
19 from highway 92, which is recognized as a gateway
20 into Hayward in the City's general plan. And will
21 also be located farther away from the
22 interpretative center.

23 Right now they're about three-quarters
24 of a mile away from the interpretative center.
25 This will put them, I think, roughly like a mile

1 or so.

2 Bur right now they're -- that is the
3 reason why KOPs 2 and 3, where you do see these
4 existing towers already, the level of contrast is
5 lower. There are these similar elements. Plus
6 the viewpoints are much further away and the
7 towers, in my opinion, don't dominate the setting.

8 But the distinction, I think, with KOP 1
9 is that the towers will be relocated to a location
10 that is much closer to the park; it's actually at
11 the entrance to the park. And so that entrance,
12 West Winton Avenue, is used, you know, by the
13 people to enter the park for jogging, hiking,
14 bicycling, fishing.

15 So the concern of those viewers we
16 considered to be high because you're entering that
17 area to use it in recreational purposes. And at
18 that viewpoint you cannot see the existing towers
19 on the roof of -- you can't see the existing KFX
20 towers, block the view from the berm and because
21 they're so far away.

22 Back behind you, but screened from a lot
23 of foreground vegetation, are those KTCT towers.
24 But there's filtered views in there, and some of
25 that area is pretty -- considered secluded.

1 If you look at that photo, for instance,
2 photo 2 and 3, all that vegetation that's in that
3 view blocks off a lot of those industrial
4 structures that are in the area.

5 PRESIDING MEMBER KEESE: Let me clarify.
6 So what I heard, in answer to Mr. Fay's question,
7 which he posed earlier to the applicant was that
8 it is appropriate to take into consideration in
9 looking at the placement of the new towers, the
10 change in visual by the removal from the old
11 location.

12 You took that into consideration. And
13 recognizing that, at KOP 1, you felt that it met
14 the test of significance.

15 At the other sites you took it into
16 consideration and decided it didn't meet
17 significance?

18 MR. KNIGHT: That's correct.

19 PRESIDING MEMBER KEESE: Thank you.

20 HEARING OFFICER FAY: And as part of
21 that analysis, just so I'm real clear on this, you
22 not only considered those towers that would be
23 relocated, but also the existing towers that are
24 within the viewshed?

25 MR. KNIGHT: Yes, the way the staff's

1 analysis is laid out, the first part of it is a
2 description of the existing conditions from each
3 KOP. There's an assessment of the overall visual
4 quality and the sensitivity of the viewers and
5 their exposure to the project, how visible it is,
6 how far away it is, the number of viewers.

7 So that we come up with an overall
8 rating of the sensitivity of the setting of the
9 viewpoint.

10 And then on the other side of what we
11 present for each KOP is a description of the
12 impacts, the degree of change when you consider
13 things like contrasts. Are there existing
14 elements, like this, in the setting. Yes or no.
15 And what do they look like, and how they differ.
16 How does this project differ from them.

17 And then consider how dominant they
18 would be; how much of the view would they occupy;
19 and how large would they be in comparison to other
20 structures and visible landscape features. Would
21 they block any views. And so you come up with an
22 overall degree of change that you combined for a
23 level of determining the significance.

24 And KOP 2 and 3 fell below the level of
25 significance. But, KOP 1, in my opinion, fell

1 above --

2 HEARING OFFICER FAY: And a big factor
3 of that is that it's the actual entrance to the
4 park, is that correct?

5 MR. KNIGHT: That's part of it, I mean
6 part of the -- one of the things that sets the
7 overall sensitivity level of the setting, is who's
8 going to see these towers. And in my opinion it's
9 a large number of recreational users that would
10 see it.

11 It's primarily why you'd go that far
12 down West Winton Avenue is essentially to get to
13 the park.

14 HEARING OFFICER FAY: Would your
15 conclusion of significance change if the FAA does
16 grant the request to paint the towers gray with
17 white strobes?

18 MR. KNIGHT: I thought the impact would
19 be reduced, but it was hard to say that that would
20 bring it down so low to say it was not
21 significant. I mean the towers still would be
22 highly prominent, visible at that close of a range
23 because they're not going to recede into the
24 horizon at that close of a distance.

25 And they will have white flashing

1 strobes on them, so it's not like they're just
2 going to recede away and nobody's going to see
3 them. They need to be visible otherwise aircraft
4 will crash into them. So that's the reason why
5 they have the lights on them in the first place.

6 Staff had also recommended the condition
7 of certification which I understand that the
8 applicant's been negotiating with the East Bay
9 Regional Parks District and has agreed to do, as
10 part of that agreement, is to plant vegetation in
11 the area to help screen the towers. That would be
12 consistent with the condition that staff's
13 proposed.

14 But, again, with that condition I still
15 do not think it would lower it to a level that was
16 not significant.

17 HEARING OFFICER FAY: I see, so it
18 helps, but it doesn't adequately mitigate it to
19 below a level of significance?

20 MR. KNIGHT: Yeah. We did some line-of-
21 sight diagrams and based on the size of the trees
22 at say five years from planting, they didn't
23 significantly screen the towers from view.

24 The thing to consider about the types of
25 trees being planted in here, they have to meet

1 certain tests of the Fish and Wildlife Service to
2 help provide perches for raptors. And the top of
3 those trees on that approved list were of smaller
4 stature trees.

5 HEARING OFFICER FAY: Okay, thank you,
6 Mr. Knight. Did you have anything further, Mr.
7 Ratliff?

8 MR. KNIGHT: No, I don't. Not on the
9 radio towers.

10 MR. RATLIFF: No, only that I would want
11 to make sure that his testimony is moved into
12 evidence.

13 HEARING OFFICER FAY: All right. Any
14 objection? Receive that, at this time, into the
15 record. Thank you, Mr. Knight, you're excused.

16 At this time we'll ask if there's public
17 comment regarding visual resources. I see -- yes,
18 sir. Please state your name.

19 MR. BECKMAN: My name is Howard Beckman.
20 I'm a resident of neighboring San Lorenzo. I'm a
21 public interest lawyer and a scientific editor.

22 I want to comment briefly on a threshold
23 question with respect to visual resources. I
24 realize that the analysis of visual impacts under
25 CEQA has proceeded apace for many years. But I

1 question what that's all about.

2 The assessment of visual impacts is not
3 a quantitative objective assessment. It's a
4 highly subjective judgment.

5 Mr. Priestley testified repeatedly that
6 in his professional opinion such-and-such. But we
7 didn't hear what Mr. Priestley's qualifications
8 were as an expert.

9 Mr. Knight, who did the analysis for the
10 CEC, is a planner.

11 And so my question to you is what gives
12 planners or any other so-called experts some sort
13 of superior insight into the visual impacts of a
14 building or a tower.

15 Mr. Priestley characterized the
16 baseline, the existing condition, as essentially
17 valueless. And I would suggest that's his
18 judgment and not an expert's judgment.

19 Thank you.

20 HEARING OFFICER FAY: Thank you. I'll
21 just say, this is sort of an unusual area, since
22 the scientific areas in engineering lend
23 themselves more to quantitative analysis. And
24 visual has always been a little different in that
25 sense. Although the witnesses try to break it

1 down.

2 Other people that wanted to comment on
3 visual?

4 MR. WHEATLAND: Mr. Fay, also, as that
5 witness comes up I would just like to direct the
6 Committee's attention that the statement of
7 qualifications of Dr. Priestley are set forth in
8 exhibit 2, and that is part of his testimony.

9 HEARING OFFICER FAY: Thank you.

10 MS. JUNGE: My name is Sheila Junge,
11 again, and I'm a resident of Hayward. And I use
12 that area regularly. In fact, the three pictures
13 that you saw from the staff report were actually
14 pictures that I took.

15 I really feel that two of the three
16 points of view that were chosen don't really
17 adequately represent the reality of the situation.
18 I would also disagree with the characterization of
19 the current location of the KFAX towers.

20 In my opinion, as a regular user of the
21 shoreline, they are not a major factor of the
22 viewshed. They're really off pretty much in the
23 south part, far distant from the interpretative
24 center; not visible from point of view 1 or the
25 area shown in my picture.

1 In fact, the base of those towers is
2 hidden by industrial buildings from some points of
3 view. So they're about 226 feet high.

4 The new towers are proposed to be 228
5 feet high, and they are sitting on a raised area
6 about 20 feet high in addition to that.

7 One of you raised a question about the
8 KTCT towers. They're also about 226 feet high.
9 They're not directly in the viewshed, either. And
10 the base of them is hidden by the raised area in
11 which they sit.

12 Point of view 3 is quite distant from
13 the existing location. And what you can't see on
14 the map here, the KTCT towers are somewhere in
15 here. And so there's actually a raised area
16 between that point of view and where the proposed
17 location is.

18 The area where the towers are proposed
19 to be, and I would argue that my pictures are a
20 much better point of view than point of view 1,
21 which is a brief view that someone would have as
22 they are driving into the area.

23 The area where the towers will be
24 immediately at the park entrance, a lot of people
25 park there; spend some time there staging. And if

1 you're a birder, like I am, you actually spend
2 some time birding in the area, because that is an
3 area, during migration, that attracts a lot of
4 unusual birds.

5 Another thing I noticed, as well, is
6 that there are a lot of people who spend their
7 lunch hour or their break. They'll come down
8 there; they may not necessarily go for a hike, but
9 they might eat their lunch or take a nap, but they
10 spend time in that area immediately around the
11 parking lot.

12 And so what they're going to have, I
13 don't know if you remember one of the pictures
14 that showed like a lane between trees, well,
15 that's the parking lot. And from that area you
16 don't really have a view of any of your industrial
17 surroundings. You really feel like you're
18 secluded.

19 But what's going to be replaced by that
20 is radio towers sitting on top of a raised area
21 that is going to put their base already about the
22 height of the low trees that are around the
23 parking lot.

24 The location of the existing towers is
25 really not in the viewshed of the trail. Point of

1 view two is really the only one of the selected
2 viewpoints that I would consider appropriate.

3 And if you look at the arrow pointing up
4 the trail, someone who is walking back from that
5 point is going to have those new relocated radio
6 towers right in their viewshed the whole time
7 they're going in that direction.

8 Whereas the existing KFAX towers would
9 be somewhere off behind their back and never,
10 except for maybe some brief times on the trail,
11 ever directly in their viewshed at all.

12 So I really have to say that I think
13 that from the locations presented and from other
14 locations on the shoreline, these are really going
15 to have a significant visual impact.

16 HEARING OFFICER FAY: Thank you. Thank
17 you for providing the photographs.

18 Yes, and could you please state your
19 name.

20 MS. SAIMA-BARKLOW: Yes. My name is
21 Viola Saima-Barklow. I'm a resident of Hayward.
22 I'm speaking for myself, however I am co-chair of
23 the Citizens Advisory Committee to HASPA.

24 I wanted to talk about the visual
25 impacts in two ways. And the two ways are this:

1 That Mr. -- Trustee Hilson read a letter to you
2 from the HASPA. The Trustees presented a
3 statement to you.

4 It pretty much covers concerns that our
5 committee developed about this project at a
6 special meeting on May 21st. There were two items
7 that were left out of the HASPA letter, and I
8 suppose we speak a little bit more bluntly than
9 elected officials.

10 And so our first recommendation was to
11 remove the wave. I realize that this topic has
12 come up before you before. Our consideration had
13 to do with the fact that the wave could provide
14 perching sites for predators. And I know the
15 applicant has addressed that.

16 However, that was a concern of the CAC
17 and continues to be a concern. There was a small
18 number of people, or perhaps it was close to
19 majority, people were concerned also about the
20 visual impacts of the wave. And so that may have
21 factored into this recommendation.

22 The other night on the news Governor
23 Davis was in Pittsburg dedicating the new power
24 plant. And I was amazed and somewhat aghast
25 because I thought that power plant, at least in

1 the video clip, was very very -- well, I'll say it
2 bluntly -- ugly.

3 And I don't know if in this particular
4 project the wave is designed to cover those pipes
5 and all those apparatus that are involved in the
6 power plant.

7 And so our Citizens Advisory Committee
8 recommended removing the wave for the predator
9 problem, potential predator problem, and also the
10 visual. And I guess I'd like to know at some
11 point whether or not, in fact, it does cover up
12 that kind of problem.

13 One other item that the Citizens
14 Advisory Committee felt very strongly about was
15 that mitigation measures that are taken, that they
16 should be in place and functioning. And we said
17 before the plant is operational.

18 Well, that may be problematic, but we
19 are concerned that mitigation is proposed;
20 mitigation is done; mitigation is monitored. But,
21 in fact, it does not continue to function properly
22 in perpetuity.

23 So, those are my two main concerns.

24 HEARING OFFICER FAY: Thank you for your
25 comments. I'll just mention that the public has

1 continuing rights for the life of the project.

2 And the Commission has continuing jurisdiction for
3 the life of the project.

4 The rights of the public are access to
5 all the documents filed with the Commission. If
6 you think that the Commission's compliance unit is
7 not enforcing the conditions of certification as
8 they are written, you can bring an action before
9 the Energy Commission. And it's been done in the
10 past.

11 But, whether you do or don't, the
12 compliance staff will be working to insure that
13 these things are -- all these conditions are met,
14 and that they are enforced.

15 Other comments on visual? Yes, sir.

16 MR. SPRAGUE: Yes, hello. I'm Doug
17 Sprague, a 22-year resident of Hayward, and a
18 regular user of the shoreline area we're talking
19 about.

20 And I recognize there's a subject
21 evaluation, you know, what the impact of these
22 towers will be. And so I tried to bring a little
23 objectivity, so I picked a ten-point scale, where
24 ten would be an ideal recreational spot, and zero
25 being really blot.

1 And so right now when I'm using that,
2 it's at about a 7. It's a wonderful spot. The
3 water is coming swishing in; you get views of the
4 hills all around; the birds are there. I
5 recommend that any of you that can, go down there
6 at lunch hour. It's a terrific spot just to kind
7 of get away and actually see the spot. It's
8 blessed.

9 So I rate that as about a 7. And, you
10 know, this is very subjective, but I would say if
11 the new tower location would drop it to about a 6.
12 And probably, the actual plant would drop it down
13 to 5 or a 4.5.

14 Thank you.

15 HEARING OFFICER FAY: Thank you. Other
16 comments on visual? Ms. George.

17 MS. GEORGE: Yes, I have used the
18 shoreline park, and I'm also concerned with all
19 the things that other people have said here.

20 And I also wanted to put forward that I
21 think that the only way to really get an opinion
22 about whether this is an impact that works or not
23 would be to have really good photos -- I didn't
24 consider the projection here very good -- shown to
25 actual users of that area. You could do a survey

1 of 100 people who are in that area for various
2 reasons at different times of the day, and really
3 get their opinion.

4 I don't think that a professional,
5 quote, professional, you know, really has the, you
6 know, the same kind of viewpoint as somebody who
7 really is there and really cares about it.

8 Although I appreciate the staff's stepping up to
9 the plate and making some much needed commentary
10 that I hope will delay this thing.

11 I also want to object to the stipulation
12 which occurred at the beginning of this section.

13 This stipulation was put in, they said, on
14 Tuesday. We were just given this document.

15 I have been unable to read it yet
16 because I've been listening to the testimony
17 that's going on, and I wanted to find out if
18 you're going to give us time before the end of
19 this section so that everyone can read this. I
20 would say you need at least 15 minutes, and
21 unfortunately probably you'd also need to have
22 access to documents that people might want to
23 review.

24 And I don't think that either of those
25 things are really possible. So I believe that

1 this is another failure of due process in this
2 hearing.

3 HEARING OFFICER FAY: Okay. I think
4 it's reasonable to give everybody time, if they
5 want to comment on the stipulation, this was
6 something new to the process.

7 We'll allow people later this afternoon
8 to make comments on visual, but only limited to
9 the stipulation. Now is the time we're taking all
10 your other comments on visual.

11 So, we'll grant your request.

12 MR. RATLIFF: Mr. Fay, I'd just point
13 out that there's nothing in the stipulation that
14 isn't included in all the documents, both by the
15 staff and the applicant.

16 These are all factual matters that are
17 in evidence through the other documents. They
18 were -- the stipulated facts are an effort to cull
19 out of those documents the most relevant factors,
20 cutting both in favor of the staff position or in
21 favor of the applicant's position.

22 But they're in one document to
23 facilitate the judgment that you have to make.
24 And that was really an effort to try to make it
25 easier for the Committee to see what was important

1 about this that we do, in fact, agree about. And
2 then the, as has been termed, subjective aspects
3 portion that you have to make your qualitative
4 judgment about.

5 HEARING OFFICER FAY: Thank you, Mr.
6 Ratliff.

7 All right, and, Mr. Armas.

8 MR. ARMAS: Yes.

9 HEARING OFFICER FAY: And could you
10 address just how the wave was adopted, at least
11 from the City's point of view?

12 MR. ARMAS: Yes, I'd be happy to do so.
13 Let me first speak to the matter of the towers,
14 since that was consuming a fair amount of time
15 just a few moments ago.

16 The City did receive an application to
17 relocate the towers from their current site to the
18 site being discussed this morning. We did perform
19 an evaluation both with respect to the
20 appropriateness from a land use perspective,
21 general plan and zoning ordinance; and then from
22 an environmental evaluation.

23 The environmental evaluation resulted in
24 the City Staff recommended to our two policy
25 bodies, both the Planning Commission and the City

1 Council, adoption of a mitigated negative
2 declaration.

3 Both bodies held public hearings; both
4 bodies received testimony from some that testified
5 today, as well as from the East Bay Regional Park
6 District.

7 After considering that testimony the
8 City Council subsequently adopted a recommendation
9 to approve the use permit with the associated
10 mitigated negative declaration including
11 acknowledging some items that the Park District
12 had requested be addressed. A condition of
13 approval required that the applicant satisfy those
14 conditions.

15 As noted in the stipulation the Park
16 District and Calpine have apparently reached
17 agreement on how that will be satisfied.

18 So we would note that the City has
19 already permitted these towers. If the plant is
20 not constructed and the operators of the towers
21 care to relocate them, that is permitted under the
22 City's regulations.

23 With respect to the wave, the so-called
24 wave, the City was concerned that we would be
25 seeing a change in the landscape were the plant

1 constructed. And as one of the speakers noted
2 already, we were concerned that the visual
3 appearance, the aesthetics would not be the best,
4 particularly as noted by the CEC Staff.

5 We consider entrance into Hayward from
6 route 92 as a gateway to our community; hence want
7 to make sure that it is conveying an appropriate
8 perspective.

9 The City Staff worked with the applicant
10 and asked that consideration be given to different
11 configurations. To summarize, it essentially
12 consisted of something like the status quo, that
13 is what we characterize as a bare plant. That
14 which was visible in the Pittsburg clip that was
15 mentioned.

16 We also looked, because there are some
17 industrial and mid-rise, or single-story office
18 building type structures there, we looked at a
19 simulation that would have an office perspective,
20 much like the early drawings for the Metcalf
21 facility.

22 Some of the public relations material
23 and brochures distributed to our residents by the
24 applicant conveyed that perspective.

25 And then we challenged the applicant to

1 look at something different. Through their
2 architectural team they brought forward the wave
3 in various forms.

4 That concept was presented to the City
5 Council at a workshop of the City Council. And
6 while there was disagreement on some, the
7 conclusion was that the wave was an appropriate
8 design, given the surrounding uses, given that it
9 was an important gateway, and that it was really
10 challenging us to look at the industrial character
11 to the west -- to the north, excuse me, in a much
12 different light.

13 At the time we were also thinking that
14 high technology was a continuing and growing
15 business pattern; that's been drawn into question
16 in recent months. But with that in mind, though
17 that it would convey a sense of new technology,
18 whether it was high tech or biotech, as we're
19 seeing those uses locate here in Hayward.

20 So with all of those things in mind, the
21 City's position is that the wave is an appropriate
22 use. The various points that were raised have
23 been taken into account. But, at the end of the
24 day, the City's position is that the wave is
25 appropriate for that location.

1 HEARING OFFICER FAY: Let me ask you,
2 what is your impression of the effect of the wave
3 other than, I mean obviously there'll be an
4 overall shape that's different from that of a
5 power plant, but am I correct the wave is actually
6 a screen, in essence, that does not completely
7 shield the view of the power plant, but softens
8 the view.

9 MR. ARMAS: That's right. The towers
10 are the, I guess the exhaust elements are of such
11 a height that they will not be fully screened.
12 The wave really functions as a nice facade to
13 alter the perspective that one would otherwise
14 receive.

15 And I should note that in addition to
16 the City's discussion, the wave was a part at one
17 of the workshops hosted by the CEC, and received
18 some discussion, as well, at that time.

19 HEARING OFFICER FAY: Okay, thank you,
20 Mr. Armas.

21 Are there any other public comments on
22 the topic of the visual impacts of the project?
23 Yes. Well, I'm sorry, sir, you've already spoken.

24 MR. BECKMAN: -- you were just talking
25 about, radio towers.

1 HEARING OFFICER FAY: Oh, you had a
2 comment about the plant, itself?

3 MR. BECKMAN: Yes.

4 HEARING OFFICER FAY: Okay.

5 MR. BECKMAN: I was under the assumption
6 that this discussion was limited to the relocation
7 of the radio towers.

8 HEARING OFFICER FAY: Any comments on
9 all aspects of --

10 PRESIDING MEMBER KEESE: Only because
11 there was not a disagreement between applicant and
12 staff on the plant.

13 MR. BECKMAN: Right.

14 PRESIDING MEMBER KEESE: There was
15 disagreement on the towers, and that's why the
16 discussion focused --

17 MR. BECKMAN: I see. I wanted to make
18 one other brief comment about fundamental
19 assumptions on visual impacts. And that is the
20 notion of mitigation, what are we -- how are we
21 mitigating.

22 There is no so-called doctrine of
23 equivalence that's developed in California. We
24 have simply a case-by-case subjective judgment of
25 what is politically acceptable to quote-unquote

1 "mitigate" the destruction or impairment of visual
2 impacts of development.

3 And so I want to point out again that
4 what appears to the elected officials in the City
5 of Hayward as nice or acceptable is not
6 necessarily acceptable to those of us who, in the
7 rest of the region, must live with that.

8 But, again I think that really it's
9 specious to talk in terms of mitigating visual
10 impacts. If we say that this view is destroyed,
11 but we're going to do something over here that
12 somehow makes up for that. And making up for
13 something is not mitigating a loss.

14 Thank you.

15 HEARING OFFICER FAY: Thank you.

16 PRESIDING MEMBER KEESE: Thank you. I'm
17 just forced to bring up a subject. I've been
18 involved in both Moss Landing and Morro Bay Power
19 Plants, each of which has massive 450-foot towers.

20 And in one community four out of five of
21 the citizens says, don't you dare take down those
22 towers. We want those towers to stay up.

23 And in the other community, four out of
24 five citizens said, you can't do anything unless
25 you tear down the towers.

1 So, we had a clear majority going one
2 way on one, and one way on the other. And there
3 massive, 450-foot towers.

4 The Committee and those of us who sit
5 here and deal with visual understand the nature of
6 looking at visual. And it is in the eye of the
7 beholder. We take all the input we can get, and
8 then are forced to deal with it and make a
9 decision. I appreciate your testimony.

10 HEARING OFFICER FAY: Okay. Last call
11 for any comments on visual impacts. All right, I
12 see no indication.

13 We're going to take an hour and a
14 quarter for lunch, and we'll be back here at a
15 quarter to two.

16 (Whereupon, at 12:26 p.m., the hearing
17 was adjourned, to reconvene at 1:45
18 p.m., at this same location.)

19 --o0o--

1 AFTERNOON SESSION

2 1:48 p.m.

3 HEARING OFFICER FAY: Okay, we'll go
4 back on the record and resume our taking of
5 evidence. We'll move to the topic of air quality.
6 Mr. Wheatland -- or Mr. Harris for the applicant.

7 MR. HARRIS: That's right, thank you,
8 Mr. Fay. We're going to have our witness, Greg
9 Darwin, and ask him to come forward and be sworn.
10 We'll walk you through his testimony very briefly
11 and just kind of highlight for you I think the
12 large areas of agreement, and the one minor sliver
13 of disagreement we have with staff.

14 So, I'd ask that the witness be sworn.
15 Whereupon,

16 GREGORY DARVIN
17 was called as a witness herein, and after first
18 having been duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. HARRIS:

22 Q Okay, why don't you go ahead and state
23 your name for the record, Greg.

24 A Gregory Darwin.

25 Q And did you prepare the air quality

1 testimony that's included in exhibits 2 and 3?

2 A Yes.

3 Q And is that testimony true to the best
4 of your knowledge and belief?

5 A Yes.

6 Q And do you adopt that as your testimony
7 in this proceeding?

8 A Yes, I do.

9 Q I think we're going to keep it pretty
10 short right now, but I do want to focus first on,
11 I think, one of the large areas of agreement,
12 among all parties, and by all parties being the
13 Commission Staff, the Bay Area District and the
14 applicant Calpine.

15 So to do that let's start off by looking
16 at operational issues first, and then we'll go to
17 construction after that, okay.

18 So, in terms of operational analysis and
19 impacts, can you summarize briefly for the
20 Committee the areas of agreement among the
21 Commission Staff, the applicant and the Bay Area
22 District?

23 A We're in complete agreement with regard
24 to the best available control technology that will
25 be used for this project.

1 We're also in complete agreement with
2 staff and the Bay Area with regard to ERCs. In
3 fact, at staff's recommendation we actually used
4 locally generated ERCs for part of the mitigation
5 for this project.

6 Also with regards to PM10 mitigation on
7 this project, we implemented sort of an innovative
8 program where we actually used fireplace and wood
9 stove inserts, if you will, to reduce PM emissions
10 from homes, as a way to offset PM from this
11 particular project.

12 So it's sort of an innovative mitigation
13 package that we're using on this project. Los
14 Esteros actually was the first project to use
15 that. And we're following in its footsteps.

16 Q So as the areas related to the operation
17 of the project, there's complete agreement among
18 all those parties?

19 A Complete agreement.

20 Q Let's move now to the second set of
21 issues related to construction impacts, and again
22 I think there's large agreement on most all issues
23 there, near complete agreement.

24 So, as to construction impacts, can you
25 describe the issues related to diesel and the

1 mitigation package there, please?

2 A Yes. With regards to diesel, again
3 agreeing with staff for using low sulfur diesel
4 fuel to control emissions of SO2, and the use of
5 soot filters to reduce emissions of PM10 from the
6 construction equipment that will be operated by
7 diesel fuel.

8 With regards to PM10 emissions, we're
9 also in complete agreement with staff with regards
10 to the mitigation package, namely the use of
11 watering, reducing the speeds of vehicles,
12 graveling of various areas in the transition
13 between the dirt and the pavement, watering of
14 wheel trucks, covering the truckloads.

15 And basically all the mitigation
16 measures that staff has outlined Calpine is in
17 complete agreement with.

18 Q Okay, so just again, so we're clear,
19 we've got complete agreement on the diesel issues
20 and complete agreement on the mitigation measures
21 that would be implemented?

22 A Correct.

23 Q Can you describe again the narrow area
24 of disagreement we have with staff, and the basis
25 for that disagreement?

1 A The area that we're disagreeing with
2 staff has to do with the use of PM10 samplers
3 during the construction phase of the project,
4 specifically during the various earth-moving and
5 grading activities.

6 Staff has recommended that we use PM10
7 samplers to monitor the ambient air offsite,
8 basically, by using an upwind and downwind
9 monitoring system to detect some delta difference
10 in the air mass.

11 Q That's AQC --

12 A AQC-5.

13 Q Continue, please.

14 A We disagree with this methodology. We
15 feel that first of all, the mitigation measures
16 already imposed will be sufficient to reduce the
17 impacts of construction activities, namely PM10,
18 to insignificant levels.

19 Staff also agrees with that, that the
20 properties of mitigation techniques, all offsite
21 impacts will be reduced to insignificant numbers.

22 Further, Los Esteros project was
23 initially proposed as a demonstration project for
24 this monitoring program. What we'd like to do is
25 actually see the results of that monitoring

1 program prior to accepting this condition to
2 determine if such a program would guarantee or
3 identify if the mitigation measures were truly
4 effective.

5 Q So the basic difference there is you're
6 agreeing then to wait for the results of the Los
7 Esteros demonstration project, once they've
8 actually demonstrated something; and then meet and
9 confer with staff at that point?

10 A Correct.

11 Q And the major basis for your
12 disagreement about using that here is primarily
13 the expedited schedule at Los Esteros versus the
14 more typical schedule here?

15 A Yeah, Los Esteros is a 24-hour day
16 construction project. Ours is between an eight-
17 and 12-hour-a-day project.

18 MR. HARRIS: Okay, I think that's all we
19 have for Greg.

20 HEARING OFFICER FAY: Okay. And did you
21 want to move that testimony in at this time?

22 MR. HARRIS: Yes, I'd like to move those
23 portions of exhibits 2 and 3 at this time.

24 HEARING OFFICER FAY: Okay, any
25 objections? So, direct that that be entered into

1 the record at this point.

2 And is the witness available for cross-
3 examination?

4 MR. HARRIS: Yes, he is, if there is
5 any.

6 HEARING OFFICER FAY: Okay. Mr.
7 Ratliff, do you have any?

8 MR. RATLIFF: No.

9 HEARING OFFICER FAY: Okay, any of the
10 other parties? Okay, I see no indication.

11 Let me ask you just a couple questions,
12 Mr. Darwin. Is the biggest concern here that this
13 is not an accelerated schedule like Los Esteros?
14 As I understand it, the staff's rationale in that
15 case was that if you construct around the clock
16 that whatever the standard is for PM10 emissions,
17 it was assumed based on a regular work day.

18 So, if you're doing three work days for
19 a 24 hour period you're logically loading the air
20 with more dust and more exhaust from construction
21 equipment, and therefore you're going to create
22 greater impacts. And they want to keep a closer
23 eye on that because of that accelerated schedule.

24 Whereas here, this is a normal schedule.

25 Is that the crux of the disagreement?

1 MR. DARVIN: That's part of it, yes.

2 HEARING OFFICER FAY: What's the other
3 part?

4 MR. DARVIN: Well, this project, like
5 you said, is going to be more of an eight to 12
6 hour normal schedule, if that's the right word to
7 use. And so Calpine was certainly looking for
8 consistency.

9 In other words, if an accelerated
10 project requires monitoring, if this is the right
11 word to use, but a non-accelerated project most
12 likely would not generate the amount of dust as
13 you would during a 24-hour period.

14 Furthermore, I would question the use of
15 offsite monitors as a way to really insure that
16 mitigation techniques are being applied.
17 Typically when you're monitoring offsite the
18 problem has already occurred. And sort of after
19 the fact that you monitored this data, and then
20 you go back and apply the mitigation.

21 I think a much more effective technique
22 would be just to insure that the mitigation
23 procedures outlined in the staff assessment are
24 employed.

25 HEARING OFFICER FAY: So, you prefer

1 just putting full effort into a wide variety of
2 mitigation techniques to prevent the particles --

3 MR. DARVIN: The generation of dust, and
4 at the same time, you know, actually looking at --
5 the Los Esteros is a demonstration project. So
6 what I would propose is that we actually look at
7 the data from the Los Esteros project, and
8 identify if these mitigation techniques truly can
9 be, what's the word to use, measured offsite.

10 In other words, by simply monitoring
11 offsite I'd like to see the data from the project
12 that really shows if those offsite measurements
13 identify the mitigation is working.

14 HEARING OFFICER FAY: Okay.

15 PRESIDING MEMBER KEESE: And what is
16 your suggestion that if Los Esteros turns out to
17 receive a positive answer, say that the monitoring
18 is positive? You'd sit down with staff for this
19 one, and what would happen?

20 MR. DARVIN: If by what you mean
21 positive meaning we actually detect --

22 PRESIDING MEMBER KEESE: Well, I --

23 MR. DARVIN: -- an offsite concentration
24 or we don't detect anything?

25 PRESIDING MEMBER KEESE: Well, you tell

1 me what positive is, and then -- I want to know
2 what positive is, and then I want to know what
3 you're going to discuss with the staff. And then
4 I want to know what the outcome of that will be,
5 because I believe I heard you say there's
6 agreement on the mitigation measures.

7 MR. DARVIN: Correct.

8 PRESIDING MEMBER KEESE: And they would
9 remain the same no matter what.

10 MR. DARVIN: Correct. If --

11 PRESIDING MEMBER KEESE: Which makes me
12 think this looks like a test program.

13 MR. DARVIN: Well, that was my
14 assumption with the Los Esteros, it was a test
15 program. To truly see if these mitigation
16 measures can -- the monitoring, as I understand
17 it, is to guarantee that the mitigation is being
18 used. And that the mitigation is effective.

19 So, by reviewing the Los Esteros
20 monitoring data, let's say for this example, a
21 positive outcome is that no PM10 was detected on
22 the monitors at all, basically zero.

23 Then obviously people's conclusions
24 would be, yes, mitigation techniques are
25 effective. They are reducing the PM emissions

1 onsite and not resulting in an offsite
2 concentration.

3 We would then review that data with CEC
4 Staff and basically in our monitoring plan it
5 would cite that as an example. That during this
6 test project offsite monitors did not detect any
7 PM data offsite. Therefore, the mitigation
8 measures are fully effective in reducing offsite
9 concentrations.

10 PRESIDING MEMBER KEESE: Typically is it
11 fair to say that the evaluation of the techniques
12 being used would be done by the project manager
13 visually?

14 MR. DARVIN: That would be one method.
15 Another method certainly could be the monitoring
16 of soil moisture, again to minimize the generation
17 of dust.

18 I mean my thought is you want to
19 minimize it before it's produced, rather than
20 after the fact.

21 PRESIDING MEMBER KEESE: Thank you.

22 MR. SMITH: Mr. Darwin, so are you
23 suggesting that there are additional measures that
24 should be undertaken at the site during
25 construction beyond what's already proposed?

1 You said earlier that you would prefer
2 not to monitor, but to put all the effort into
3 insuring the events don't occur.

4 MR. DARVIN: Right.

5 MR. SMITH: It sounded like you had in
6 mind some -- there might be a need for additional
7 things onsite to insure that the events not occur.
8 Am I mistaken or is there some clarification that
9 you --

10 MR. DARVIN: Not additional. More like
11 active monitoring to insure let's say that
12 watering would be used. For instance, something
13 as simply as a record keeping log to insure that x
14 gallons of water are being used. Something along
15 those lines.

16 I was not proposing that any new
17 additional mitigation be proposed, just that a
18 system be put in place to insure that the existing
19 mitigation, as outlined in the document, be used.

20 MR. SMITH: Thank you.

21 HEARING OFFICER FAY: Okay, thank you
22 very much, Mr. Darwin. You're excused.

23 Mr. Ratliff, is your witness ready?

24 MR. RATLIFF: Yes, the staff witness is
25 Mr. Gabe Behymer. But I also want to mention that

1 the Bay Area District has a representative here
2 today, Mr. Nishimura, who can speak to the final
3 determination of compliance that the Bay Area
4 District has provided regarding this project.

5 And perhaps at the close of staff's
6 testimony maybe Mr. Nishimura could also come
7 forward for a moment to attest to the accuracy of
8 that document, as well.

9 HEARING OFFICER FAY: Good. And is
10 staff offering the final determination of
11 compliance?

12 MR. RATLIFF: Yes.

13 HEARING OFFICER FAY: Okay. Please go
14 ahead and swear the witness.

15 Whereupon,

16 GABRIEL BEHYMER

17 was called as a witness herein, and after first
18 having been duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. RATLIFF:

22 Q Mr. Behymer, did you prepare the
23 testimony entitled air quality that is part of
24 exhibit 1 in the FSA?

25 A Yes, I did.

1 Q Is that testimony true and correct to
2 the best of your knowledge and belief?

3 A Yes, it is.

4 Q Do you have any corrections to make at
5 this time? I believe you do?

6 A I'd like to make one correction to
7 condition of certification AQSC-5.

8 HEARING OFFICER FAY: What page is that
9 on?

10 MR. BEHYMER: It's on page 4.1-37.
11 Subsection (2), the sentence reads: The
12 simultaneous use of upwind and downwind monitors
13 continuously during these activities. I'd like to
14 strike the word "continuously". It's misleading
15 because continuous monitoring devices are used on
16 the power plant operations, and that's not what's
17 intended by this condition.

18 BY MR. RATLIFF:

19 Q With those changes is your testimony
20 accurate and correct?

21 A Yes, it is.

22 Q Would you summarize, in a general way,
23 the conclusions of your testimony?

24 A Staff reviewed the criteria pollutant
25 impacts from both construction activities and

1 operation activities of the Russell City Energy
2 Center. And found that there'll be no significant
3 impacts as long as the conditions of certification
4 proposed herein are strictly adhered to.

5 A final determination of compliance was
6 issued by the Bay Area Air Quality Management
7 District in support of the Russell City Energy
8 Center. The conditions of certification contained
9 herein are largely based on the conditions
10 proposed by the Bay Area Air Quality Management
11 District. But there are a number of additional
12 conditions proposed by staff.

13 Q Specifically with regard to the issue of
14 the monitoring of construction, particulate
15 matter, you heard the prior testimony today.
16 Could you describe the purpose and rationale for
17 requiring mitigation monitoring at the
18 construction site?

19 A The mitigation measures proposed for the
20 construction phase of the project can be very
21 effective, but there's a range of effectiveness
22 that is of concern to staff if the vigilance of
23 onsite personnel is not at above average levels,
24 then there could be a significant impact due to
25 the construction activities of the project.

1 For these reasons the staff recommends
2 that a heightened level of onsite verification of
3 the construction mitigation activities be
4 performed. The most efficient way of doing this
5 would be to actually monitor the impacts,
6 particulate matter impacts from construction
7 activities.

8 Therefore, staff proposed AQSC-5, which
9 proposes the use of mitigation devices -- of
10 monitoring devices for the PM10 impacts.

11 Q Is particulate matter less than 10
12 microns necessarily visible to the naked eye?

13 A Not necessarily, no.

14 Q Is that the rationale for use of
15 monitoring as opposed to just visible monitoring?

16 A Yes, AQSC-5 is in addition to the
17 monitoring provided for in the other AQSC
18 conditions. Staff proposes using soil moisture
19 monitoring, soil moisture testing devices. Also
20 visual monitoring, an onsite personnel will be
21 watching for dust plumes leaving the site.

22 And because the criteria pollutant of
23 concern is not necessarily visible, staff feels
24 monitoring devices will be necessary.

25 Q There was earlier discussion of the Los

1 Esteros project and the monitoring that's being
2 used in that project. Should we determine that
3 that monitoring indicated that the emission levels
4 for construction activity use were low, would that
5 indicate that it was unnecessary for this project?

6 A I don't believe it would make it
7 unnecessary for monitoring. Certainly, if data
8 were provided from another similar project,
9 construction, that is, from a power plant, showing
10 a reduced level of -- an acceptable level of
11 mitigation from the similar activities, then that
12 would go into the review process for the ambient
13 air monitoring plan proposed in AQSC-5.

14 However, the sites are different; the
15 soil content would be different; there would be
16 different parameters, construction schedules.

17 And I would like to point out that any
18 similarities between the two projects are not
19 necessarily correct considering that the modeling
20 that was prepared for the two projects showed many
21 times higher impact from the Russell City project
22 than from the Los Esteros project, even though the
23 Los Esteros project is a 24-hour day construction
24 schedule.

25 I believe the numbers are, the original

1 eight- to ten-hour construction schedule for Los
2 Esteros showed at 13.2 mcg impact from PM10. The
3 expedited construction schedule for Los Esteros
4 showed approximately a 37 mcg impact.

5 Whereas the normal eight to 12 hour
6 construction schedule for Russell City showed an
7 90 mcg impact.

8 So the comparison between the two
9 projects aren't necessarily accurate since they
10 are a different size construction project.

11 Q Does that conclude your testimony?

12 A Yes, it does.

13 MR. RATLIFF: The witness is available.

14 HEARING OFFICER FAY: Any cross-
15 examination?

16 MR. HARRIS: No, thank you.

17 HEARING OFFICER FAY: Okay.

18 Mr. Behymer, were you the analyst and
19 witness in the Los Esteros evidentiary hearings?

20 MR. BEHYMER: Yes, I was.

21 HEARING OFFICER FAY: And were you asked
22 about the significance of the accelerated schedule
23 in that?

24 MR. BEHYMER: Yes, I was.

25 HEARING OFFICER FAY: In that case. And

1 whether or not that contributed to your
2 recommendation that there be monitoring for PM10?

3 MR. BEHYMER: In the context I believe
4 you're referring to my statement that the
5 accelerated schedule was the reason for asking for
6 the monitoring?

7 HEARING OFFICER FAY: Yes.

8 MR. BEHYMER: In that context I was
9 using the accelerated schedule to refer to the 37
10 mcg impact, as opposed to the non accelerated
11 schedule wherein there was a 13.2 mcg impact. The
12 impact is what is of concern here, not the length
13 of the schedule.

14 The standard is a 24-hour average. So,
15 in this case, the expedited schedule in the Los
16 Esteros case is simply the 13 mcg -- I'm sorry,
17 I'll restate that -- the expedited schedule means
18 more emissions were being emitted.

19 However, in this case the Russell City
20 project is emitting more emissions over a short
21 period of time with an average over 12 hours -- 24
22 hours.

23 HEARING OFFICER FAY: And what accounts
24 for the difference in why would it be that Russell
25 City would model an 89 milligram level under a

1 normal work schedule, whereas Los Esteros, under
2 an accelerated schedule, would only be
3 monitoring -- modeled for 37 milligrams?

4 MR. BEHYMER: In fact, that would depend
5 on a number of different assumptions, and there
6 can be some uncertainty in these numbers.

7 However, the probable difference here is
8 just the size of the construction site. And the
9 Los Esteros site, I believe, has less major earth
10 moving activities because it's a much smaller
11 turbines that are being installed, and much more
12 prefabricated equipment being installed compared
13 to the Russell City site.

14 Basically the difference in the size of
15 the construction project.

16 HEARING OFFICER FAY: So the soil type
17 if not a particularly significant difference?

18 MR. BEHYMER: Soil type can have a
19 substantial impact on PM10 generation, but in most
20 modeling, most modeling runs would assume a worst
21 case or semi-worst case scenario, those
22 parameters. Those are based on USEPA, U.S.
23 Environmental Protection Agency standards.

24 HEARING OFFICER FAY: All right, that
25 addresses my question about the relative benefit

1 of using it in the Los Esteros case versus this
2 case.

3 What about the demonstration aspect of
4 the monitoring? Is the process mature enough for
5 us to be requiring it under normal circumstances?
6 Or should we not first find out whether we can
7 connect a high reading of PM10 with activities on
8 the site and vice versa?

9 MR. BEHYMER: This process has been used
10 on numerous construction projects, and
11 particularly on hazardous material remediation
12 projects before. The upwind/downwind monitoring.
13 This is not a new technology.

14 HEARING OFFICER FAY: Used elsewhere in
15 California?

16 MR. BEHYMER: I believe so, yes.

17 HEARING OFFICER FAY: Do you know any of
18 those sites?

19 MR. BEHYMER: Not offhand.

20 HEARING OFFICER FAY: And what is the
21 frequency of the monitoring? You said it's not
22 continuous.

23 MR. BEHYMER: In this case that would be
24 up to the fugitive dust mitigation manager's
25 proposal. The AQSC-5 requests that an independent

1 professional be commissioned by the project owner
2 in order to oversee these activities, the fugitive
3 dust mitigation activities.

4 That professional would prepare an
5 ambient air monitoring program which would specify
6 the frequency and type of monitors to be used in
7 order to achieve suitable mitigation assurances.

8 PRESIDING MEMBER KEESE: Mr. Behymer,
9 I've looked at your testimony, you suggested the
10 use of these monitors was necessary, I guess to
11 assure compliance. This is -- if this technology
12 has been applied to other projects, it hasn't
13 historically been applied to power plant projects.

14 Did you mean that it's necessary, or are
15 we saying that it's helpful that the mitigation
16 measures you suggested were necessary, but --

17 MR. BEHYMER: I believe it's necessary.
18 I guess you could say very very helpful, for two
19 reasons. First of all, I can say with a high
20 level of confidence, but -- I can say with a high
21 level of confidence that the construction will not
22 cause significant impacts if a higher than average
23 level of mitigation is achieved.

24 However, I can't guarantee that the
25 onsite personnel will achieve a higher than

1 average level of mitigation. I believe that
2 that's possible.

3 And secondly, I believe that the onsite
4 monitoring will provide an additional motivation
5 for the onsite personnel to achieve a higher than
6 average level of mitigation.

7 PRESIDING MEMBER KEESE: So it sounds
8 like your suggestion is going to be that in the
9 future monitoring, upwind and downwind monitoring
10 will be a standard.

11 MR. BEHYMER: I believe the technology
12 is available now, and has not been in the past.
13 And that it should be used now.

14 PRESIDING MEMBER KEESE: You're
15 disagreeing with the applicant on this. Is the
16 disagreement with respect to both upwind and
17 downwind monitoring and soil moisture monitoring?

18 MR. BEHYMER: I believe the only
19 disagreement between the applicant and staff is on
20 whether or not the up and down monitoring should
21 be used.

22 PRESIDING MEMBER KEESE: They're not
23 disagreeing with the --

24 MR. BEHYMER: I believe all other areas
25 of monitoring and mitigation are in agreement.

1 PRESIDING MEMBER KEESE: Thank you. And
2 we discussed briefly the 24-hour at Los Esteros,
3 and I believe there was some discussion during Los
4 Esteros of the fact that there would not be an
5 ability during the extensive nighttime hours to
6 visually see an incident.

7 In this case I guess there would be an
8 ability to visually see any egregious incident. I
9 won't say any egregious, but most times if there
10 was a violation of PM10 there would probably be
11 something visible also. Am I correct?

12 MR. BEHYMER: Yes, but that's -- that's
13 correct, but that's still a subjective measurement
14 scale; that's subjective on the part of the
15 mitigation manager who is making that
16 determination.

17 Staff believes that the monitoring
18 devices will provide a concrete source of data to
19 back up any subjective determinations.

20 PRESIDING MEMBER KEESE: Do you see any
21 merit in what the applicant asked, which is to
22 glean out of Los Esteros something relevant and
23 adopt some different strategy?

24 MR. BEHYMER: I believe that the data
25 coming from Los Esteros will certainly influence

1 the ambient air monitoring plan for Russell City.

2 However, I'm not sure I agree with the
3 applicant fully on that point.

4 PRESIDING MEMBER KEESE: Thank you.

5 MR. SMITH: Mr. Behymer, what are the
6 typical lag times that you might expect from a
7 point in time that these monitors pick up
8 excessive PM10, the emissions offsite, and the
9 point in time when somebody analyzes that data,
10 synthesizes it, contacts the applicant and
11 something is effected onsite to eliminate the PM10
12 problem?

13 MR. BEHYMER: I believe it would be less
14 than an hour, and as short as a few minutes. But
15 realistically less than an hour which is --

16 HEARING OFFICER FAY: Have you had
17 experience implementing a monitoring program like
18 this?

19 MR. BEHYMER: Personally?

20 HEARING OFFICER FAY: Yes.

21 MR. BEHYMER: A monitoring program, no.
22 Using hand-held monitors for criteria pollutants,
23 yes.

24 HEARING OFFICER FAY: Okay, so you've
25 had experience using hand-held monitor. I guess

1 what I'm interested in is if you've had any
2 experience translating, say, an excessively high
3 reading to changing behavior on the ground, it
4 occurs to me that it's one thing to have someone
5 fire up a big diesel grader that hasn't been tuned
6 properly, and you get a big load of particulate in
7 the air. It's a whole other thing to have a
8 number of sources elevated in fugitive dust so
9 that perhaps the monitor picks up a higher
10 reading, but the eye does not readily.

11 How do you envision that it would work
12 in that kind of situation?

13 MR. BEHYMER: The monitors would be used
14 for long-term assurance of compliance, not on an
15 hour-to-hour basis, but more on a day-to-day
16 basis.

17 The fugitive dust mitigation manager
18 would primarily rely on soil moisture samples, on
19 visual monitoring of activities, and also on just
20 enforcement of general mitigation practices. For
21 instance, speed limit signs need to be posted,
22 that sort of thing. Gravel needs to be laid down,
23 or some concrete at entrance and exits of the
24 site, aprons. Wheel washing. Those type of day-
25 to-day practices need to be maintained and

1 supervised.

2 The ambient monitors would provide an
3 essential concrete source of data to back up the
4 determinations made by the fugitive dust
5 mitigation manager during activities that produce
6 excessive amounts of fugitive dust, such as earth
7 moving, grading activities.

8 HEARING OFFICER FAY: And that manager
9 would then go back to the construction crew and
10 say we've got to tighten things up. I recommend
11 the following steps to reduce the PM10 load?

12 MR. BEHYMER: In the fugitive dust
13 mitigation plan for the Los Esteros project, I've
14 reviewed a rough copy of that, but I haven't seen
15 a final copy of that. But one of the sections
16 that I asked the people preparing it to put in is
17 a protocol for how the fugitive dust mitigation
18 manager will communicate with onsite personnel and
19 implement these activities, change these
20 activities, yes.

21 HEARING OFFICER FAY: Thank you.
22 Anything further, Mr. Ratliff?

23 MR. RATLIFF: Only the FDOC.

24 HEARING OFFICER FAY: Okay. And are you
25 offering that?

1 MR. RATLIFF: Yes.

2 HEARING OFFICER FAY: Okay. First of
3 all, is it separate from Mr. Behymer's testimony?

4 MR. RATLIFF: Yes.

5 HEARING OFFICER FAY: Then I think we'll
6 need to move Mr. Behymer's testimony and identify
7 the FDOC.

8 MR. RATLIFF: I should say yes, it is
9 separate. Mr. Behymer's testimony and its
10 proposed conditions incorporates all of the
11 requirements the Bay Area Air Quality Management
12 District would itself require were it licensing
13 the project.

14 And so we've incorporated those into our
15 conditions. But the FDOC, itself, I think, should
16 be always included as part of the record. And I
17 would like to have it marked as an exhibit for
18 that reason.

19 HEARING OFFICER FAY: Okay, that will be
20 exhibit 6, the final determination of compliance
21 by the Air Quality Management District.

22 And you're moving both documents?

23 MR. RATLIFF: Yes.

24 HEARING OFFICER FAY: All right. Any
25 objection. Okay, we'll receive both of those into

1 the record.

2 And if you are finished we'll move to
3 ask the Air District to speak on the final DOC.

4 MR. RATLIFF: I am finished.

5 HEARING OFFICER FAY: Okay. Could we
6 have the Air District representative come forward?

7 Hi.

8 MR. NISHIMURA: Hi.

9 HEARING OFFICER FAY: We wondered if you
10 could just give us a summary of what review the
11 Air District conducted for this project, and what
12 you included in it.

13 MR. NISHIMURA: My name is Bob
14 Nishimura; I'm a supervising air quality engineer.
15 Actually there was an engineer that worked on this
16 particular project, but he reported to me, so he
17 did the calculations and wrote the final
18 determination of compliance.

19 HEARING OFFICER FAY: And have you
20 reviewed the staff's FSA?

21 MR. NISHIMURA: Yes, I did.

22 HEARING OFFICER FAY: And they
23 incorporated all the important requirements in
24 your FDOC?

25 MR. NISHIMURA: Yes.

1 HEARING OFFICER FAY: Did you require
2 this up and down wind monitoring provision that's
3 in controversy?

4 MR. NISHIMURA: No, we didn't.

5 HEARING OFFICER FAY: Have you ever
6 required that on any construction projects or
7 remediation projects?

8 MR. NISHIMURA: You mean on power plants
9 or any projects?

10 HEARING OFFICER FAY: No, not
11 necessarily power plants, just any projects that
12 you've issued permits for.

13 MR. NISHIMURA: Not to my knowledge.

14 HEARING OFFICER FAY: Okay. Any other
15 comments on the air quality impacts of this
16 project?

17 MR. NISHIMURA: No. We agree with the
18 final staff assessment.

19 HEARING OFFICER FAY: Okay, thank you
20 very much.

21 MR. NISHIMURA: Okay.

22 HEARING OFFICER FAY: All right, now
23 we'd like to take public comment on the question
24 of air quality. May I see who's interested in
25 doing so? Yes, sir, in back.

1 MR. DeLFINO: Good afternoon. My name
2 is Frank DelFino, and thank goodness I don't live
3 in Hayward so I don't have to suffer with this
4 thing.

5 But, I do have a question. All the
6 discussion seems to be about air pollutants that
7 come out of the power plant. Well, Hayward does
8 not have any facilities that have large cooling
9 towers, and the question that comes to mind is
10 what is or what are these cooling towers going to
11 be putting into the atmosphere.

12 Because you're going to have water
13 treatment. I know there are thousands of cooling
14 towers around. Is there going to be an impact
15 from the effluent from these cooling towers on the
16 adjacent properties?

17 That's all I have to say. Thank you.

18 HEARING OFFICER FAY: I'll just mention
19 that the entire project has to be analyzed for
20 emissions, and so emissions from the cooling
21 towers as well as from the exhaust stack would be
22 part of the analysis. Is that right, Mr. Behymer?

23 MR. BEHYMER: That's correct.

24 HEARING OFFICER FAY: Yes, sir.

25 MR. BECKMAN: My name is Howard Beckman.

1 I actually have a question. It's not apparent in
2 the staff report whether any statistical tests
3 were done for the predictive reliability of the
4 model, or to test the answer for any of the
5 results.

6 HEARING OFFICER FAY: Well, we don't
7 usually allow questions, but under the
8 circumstances I think time allows, and we would
9 like the public to understand how the process
10 works.

11 Can you help us, Mr. Behymer?

12 MR. BEHYMER: The operations modeling or
13 the construction modeling, --

14 MR. BECKMAN: The ISE modeling.

15 MR. BEHYMER: -- or both? The modeling
16 that is prepared is generally worst case modeling.
17 So, there's a very high level of confidence in
18 this being worst case predictions.

19 MR. BECKMAN: So I believe the answer is
20 no statistical tests were done, is that correct?

21 MR. BEHYMER: Correct.

22 MR. RATLIFF: I think it's perhaps
23 important to note that these are EPA-approved
24 models. And I don't know what the EPA approval
25 process is, but it may, in fact, include such

1 testing. I don't know.

2 HEARING OFFICER FAY: Any other comments
3 on air quality? Okay. Yes, ma'am.

4 MS. GEORGE: I wanted to know whether
5 the -- well, I want to know, but you don't have to
6 answer if that's a problem, but the effects on
7 people downwind who may already be highly stressed
8 because of the impacts from highway 92 and 880 and
9 other industrial facilities.

10 I don't know whether those impacts -- I
11 know in other areas there are people that are
12 stressed to the point where they have asthma
13 that's so bad that there couldn't be anything
14 added on top without having an impact.

15 And along those same lines, I want to
16 know whether the downwind effects in the Livermore
17 Valley and in San Joaquin County have been studied
18 on this, since this is potentially going to, you
19 know, just go into those areas and have an impact
20 on residents in those areas in addition to the
21 immediate neighbors here.

22 The other questions that I had was
23 whether there's a study of the cumulative impacts
24 in the event that there is another San Mateo
25 Bridge constructed, which I know comes up from

1 time to time and may actually happen within the
2 next 30 years.

3 Another issue that I want to know if
4 you've studied is the water vapor. I believe that
5 there is an issue with water vapor coming out of
6 this plant that could have another type of an
7 impact.

8 I also want to know whether there's any
9 study of the visual impacts of smog. I remember
10 coming into Salt Lake City and seeing the whole
11 mountain, you know, having this progressive brown
12 color on it. It's really hideous. And that could
13 be, I don't know if that belongs in visual impact
14 or in air quality, maybe both.

15 And lastly, I'd like to know whether the
16 impacts of increased carbon dioxide and methane
17 have been investigated. The contributions to
18 global warming from this power plant as it is
19 constructed, as it is operating. And also the
20 potential in case of a pipeline rupture of the
21 extremely high global warming problem of methane.

22 PRESIDING MEMBER KEESE: Thank you. You
23 know, it is unfortunate that you were unaware that
24 there were workshops that answered these specific
25 questions, and dealt with each of these specific

1 issues.

2 I can say that the staff's document that
3 has been presented to us suggests that in none of
4 these areas is there a significant impact. We
5 will be accepting that.

6 Clearly, you're going to be able to
7 submit written comment if you do believe that in
8 any of these areas there is a significant impact.

9 If we find there's a significant impact
10 it is our obligation to see that they are fully
11 mitigated. So when I say that staff finds no
12 significant impact, I mean staff has suggested
13 mitigation measures which the applicant has
14 generally accepted.

15 The ones you're hearing here applicant
16 has accepted that they will take those mitigation
17 steps so there will be no significant impact.

18 It is a voluminous document. It is
19 available on our website and has been for a number
20 of days. It's available in a library down here in
21 the area, also.

22 MS. GEORGE: Well, I was over at the
23 Tesla hearing the other day and I understood from
24 the San Joaquin County Air District that they are
25 out of compliance with the air quality. And one

1 of the biggest problems that they see is the bad
2 air that's coming through the passes from the Bay
3 Area.

4 And certainly they're looking at vehicle
5 mitigation impacts, but they're also questioning
6 power plant impacts on air quality in those other
7 areas, which I do not believe have been studied by
8 the staff, as far as I know.

9 PRESIDING MEMBER KEESE: Air emissions
10 are mitigated. The --

11 MS. GEORGE: In San Joaquin County?

12 PRESIDING MEMBER KEESE: They're
13 mitigated for this power plant, they will be
14 mitigated here.

15 MS. GEORGE: For San Joaquin County?

16 PRESIDING MEMBER KEESE: Well, what
17 drifts today to San Joaquin County will drift to
18 San Joaquin County.

19 MS. GEORGE: Yeah, but I don't know if
20 they've been mitigated, you know, and I don't know
21 what a mitigation would mean for a county which
22 already has unacceptable air quality where the air
23 is coming from here.

24 PRESIDING MEMBER KEESE: Well, this
25 power plant will not contribute any more emissions

1 than current --

2 MS. GEORGE: It won't --

3 PRESIDING MEMBER KEESE: -- to San
4 Joaquin County.

5 HEARING OFFICER FAY: That's what the --

6 PRESIDING MEMBER KEESE: That's what
7 emissions --

8 HEARING OFFICER FAY: -- offset credits
9 are about. To basically require the proponent of
10 the project to buy up enough pollution rights to
11 more than make up for the new --

12 MS. GEORGE: That's another matter.
13 Buying up pollution rights and not polluting is --
14 those are two different things. I don't accept
15 that pollution credits are going to help somebody
16 who's being impacted by bad air.

17 HEARING OFFICER FAY: Okay. It is the
18 way it's set up under the Clean Air Act, but I
19 realize that a lot of people do not agree with
20 that.

21 I would like to, on your behalf, make a
22 few followup questions to Mr. Behymer.

23 In terms of people under breathing
24 stress, did the staff look at cumulative impacts
25 like this project in conjunction with local

1 highways?

2 MR. BEHYMER: The assumption is that
3 local highways are represented in the background
4 data that's taken. The background data, we use a
5 representative number of the highest measured data
6 point for the past three years of the ambient
7 level of each criteria pollutant.

8 We add that to the project's highest
9 possible worst case emissions -- I'm sorry, worst
10 case impacts. And then we use that number as our
11 working number to determine significance levels.

12 In terms of a -- that's the freeways.
13 In terms of a cumulative impact, staff also had
14 examined the impact of proposed projects in the
15 area. Those are projects that would likely be
16 constructed in the near future, but are not yet
17 constructed.

18 And added those impacts to the impacts
19 of the power plant to make sure that there wasn't
20 a cumulative concern.

21 HEARING OFFICER FAY: Now, she mentioned
22 discussion of a replacement for the San Mateo
23 Bridge. There must be a threshold at which you
24 begin analyzing a project. But if it's merely
25 mentioned as a possibility, that you don't analyze

1 it, is that correct?

2 MR. BEHYMER: Correct. The construction
3 of a new bridge would not come into this analysis.

4 HEARING OFFICER FAY: Because it hasn't
5 begun permitting?

6 MR. BEHYMER: Hasn't begun permitting.

7 HEARING OFFICER FAY: Hasn't been
8 approved. Okay. What about the water vapor
9 question. Did you look into water vapor emissions
10 from the project?

11 MR. BEHYMER: The water vapor, itself,
12 no. But the pollutant, particulate pollutant that
13 is entrained in the water vapor we did include in
14 our analysis. It's substantially a small
15 percentage of the overall particulate pollutant
16 from the power plant. But we examined both the
17 actual chemical composition of that pollutant, and
18 quantity of that pollutant, where it will be
19 deposited, and how much.

20 HEARING OFFICER FAY: And did you have
21 input to the staff that did the visual impacts
22 analysis as to the frequency of a visible plume
23 that might create a visual impact from the cooling
24 towers?

25 MR. BEHYMER: Yes. My understanding is

1 a plume analysis was prepared.

2 HEARING OFFICER FAY: And do you know
3 what percentage of the time that was a visible
4 plume?

5 MR. BEHYMER: Not offhand. But with
6 this type of cooling tower it should be very very
7 infrequently, and during the times that it would
8 occur it would likely be cloudy or actual
9 precipitation.

10 HEARING OFFICER FAY: Also, under her
11 question about global warming, am I correct that
12 the staff does now look at a project's potential
13 contribution to global warming?

14 MR. BEHYMER: No, sir.

15 HEARING OFFICER FAY: They do not?

16 MR. BEHYMER: I did not look at any
17 contribution to global warming of this project as
18 part of the air quality section.

19 I'm not sure -- actually, excuse me, I'm
20 not sure if staff looks at global warming
21 concerns. The air quality section did not look at
22 global warming concerns, since CO2 is not a
23 criteria pollutant.

24 HEARING OFFICER FAY: Okay. Thank you,
25 Mr. Behymer.

1 Anything further, Mr. Ratliff?

2 MR. RATLIFF: That's it.

3 HEARING OFFICER FAY: Okay. Thank you.

4 That concludes our taking of testimony on air
5 quality.

6 We'd like to now move to the subject of
7 biological resources. I know there's a lot of
8 interest in that. And we would invite the staff
9 and applicant to give a thorough summary of how
10 this was analyzed so that people who have not had
11 the chance to review the record can have some
12 understanding of how many months of negotiation
13 and discussion and workshops has gone into this by
14 various agencies.

15 Mr. Wheatland.

16 MR. WHEATLAND: Can I have one moment
17 off the record, please?

18 HEARING OFFICER FAY: Sure.

19 MR. WHEATLAND: What I'm consulting on
20 here is your request to have a presentation on the
21 biological resources area. I'm consulting here to
22 see who is most appropriate on staff to do that,
23 if I could have one moment, please.

24 HEARING OFFICER FAY: How much time do
25 you need? Should we take a break?

1 MR. WHEATLAND: No, just -- no, I don't
2 think we need a break.

3 (Pause.)

4 MR. WHEATLAND: Okay, thank you very
5 much for the break. We will have our witness who
6 is sponsoring the sections on biological resources
7 provide you with a summary of the overall
8 mitigation proposal for biological resources.

9 By way of general introduction, I'd like
10 to explain that our testimony is set forth in
11 exhibits 2 and 3, sponsored by Mr. Brett Hartman.
12 And there are two additions that we have to what
13 is -- two additions or changes to what is
14 recommended in the staff's final assessment. And
15 I'm going to briefly highlight those for you.

16 And then having done that we'll bring
17 Mr. Hartman up and he can be sworn in and
18 summarize it for you, if that would be all right.

19 HEARING OFFICER FAY: Sure.

20 MR. WHEATLAND: All right, first of all,
21 we have an addendum in exhibit 3 in biological
22 resources. And that addendum is to do one thing.
23 We have entered into an agreement, a memorandum of
24 understanding, between the applicant and the East
25 Bay Regional Park District to address the issues

1 of impacts to the East Bay Regional Park District,
2 and to put forth a comprehensive mitigation
3 package to address the Park District's concerns.

4 As part of that agreement, as Mr.
5 Hartman will describe, the Park District has
6 agreed to take title to the mitigation property.
7 Calpine has agreed to undertake certain
8 improvements and enhancements to that property.
9 And has agreed to fund the continuing upkeep of
10 that property over a period of years.

11 As part of that memorandum of
12 understanding the parties, the applicant and East
13 Bay Regional Park District have asked that the
14 specific actions that we're required to take under
15 that agreement be incorporated into the
16 Commission's decision as conditions of
17 certification.

18 And therefore, we are proposing in this
19 addendum to replace Bio-10 with a comprehensive
20 description of the various actions that we are
21 required to take under the agreement with the East
22 Bay Regional Park District.

23 HEARING OFFICER FAY: And the language
24 in the staff-proposed conditions is not
25 satisfactory to you?

1 MR. WHEATLAND: No. The language in the
2 staff condition is not satisfactory for two
3 reasons. One, it isn't sufficiently detailed
4 description of the various actions that we'll be
5 taking with respect to the East Bay Regional Park
6 District. And it isn't a comprehensive enough
7 list of mitigation measures that we have
8 undertaken.

9 And second of all, there is a difference
10 in the timing of the proposed actions. In the
11 staff's proposed condition BIO-10 it would require
12 the applicant to purchase the habitat compensation
13 property within 60 days of certification of the
14 project. Or in other words, 60 days after the AFC
15 is granted. And to provide the endowment in place
16 at that time.

17 Under the agreement that has been
18 entered into with the East Bay Regional Park
19 District the Park District has expressed a
20 preference that the applicant would undertake a
21 series of improvements and enhancements to the
22 mitigation property before transferring title of
23 that property to the Park District.

24 And in addition, the contribution of the
25 cash endowment to the Park District would begin on

1 a different sequence under agreement with the Park
2 District where the first payment would begin
3 within 60 days of the start of construction of the
4 permanent structures in the project.

5 So, because of those differences we had
6 proposed a more detailed set of mitigation
7 measures in BIO-10.

8 And I see the other item that I was
9 going to note actually is an item that is in a
10 different section. So that is the only -- this
11 addendum is the only item under biology.

12 Would you like us to call Mr. Hartman
13 forward now then?

14 HEARING OFFICER FAY: Yes, I think so.
15 And I think we also, if you're willing to
16 introduce the MOU in the evidentiary record, we
17 will mark it for exhibit. Is that acceptable?

18 MR. WHEATLAND: Oh, absolutely, that
19 would be great. So we would move that the
20 memorandum of understanding between the applicant
21 and the East Bay Regional Park District be
22 identified as the next exhibit in order.

23 HEARING OFFICER FAY: That will be
24 exhibit 7.

25 MR. WHEATLAND: And we would move

1 exhibit 7 into evidence.

2 HEARING OFFICER FAY: Any objection? So
3 moved. And we'll hear from Mr. Hartman first
4 before you move his testimony in?

5 MR. WHEATLAND: Okay.

6 HEARING OFFICER FAY: Okay. Let's bring
7 him up and have him sworn in.

8 Whereupon,

9 BRETT HARTMAN

10 was called as a witness herein, and after first
11 having been duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. WHEATLAND:

15 Q Okay, Mr. Hartman, I direct your
16 attention to your testimony in exhibits 2 and
17 exhibits 3 on biological resources. Was that
18 testimony prepared by you?

19 A Yes, it was.

20 Q And is that testimony true and correct
21 to the best of your knowledge?

22 A Yes, it is.

23 Q Do you have any changes to that
24 testimony here today?

25 A No, I do not.

1 Q Now, your testimony identifies certain
2 biological impacts as a result of the construction
3 of this project. Could you briefly summarize the
4 nature of the impacts and the mitigation package
5 that the applicant has prepared to mitigate those
6 impacts?

7 A Okay. We have jointly with the CEC
8 Staff and the various agencies such as California
9 Department of Fish and Game, U.S. Fish and
10 Wildlife Service, Army Corps of Engineers, the
11 Regional Water Quality Control Board, have
12 identified various impacts that the Russell City
13 Energy Center could potentially create. And have
14 developed a series of mitigation plans.

15 We have submitted a biological
16 assessment to the U.S. Fish and Wildlife Service.
17 We have submitted a noise mitigation plan; a
18 raptor and corvid control plan. And we have
19 submitted a wetland mitigation plan.

20 The wetland mitigation plan is in
21 compensation for impacts to 1.68 acres of wetland
22 on the power plant site. And the applicant will
23 be purchasing just over 26 acres of land
24 immediately adjacent to the power plant site.
25 That land is made up of a mosaic of habitats

1 including upland, dike seasonal wetlands and some
2 marsh habitat and some seasonal ponds.

3 There will be various improvements to
4 that property as per the requirements of the Army
5 Corps of Engineers and the Regional Water Quality
6 Control Board.

7 And these include -- the primary ones
8 are wetland creation at just over one-to-one
9 ratio. And normally more than a one-to-one ratio
10 is required, but we have also agreed to enhance,
11 significantly enhance over 30 acres of managed
12 salt marsh, restore tidal flows.

13 The most important aspect of this to
14 take into consideration is that it really ties
15 together the whole Hayward area regional
16 shoreline. It was a plan developed with the East
17 Bay Regional Park District and the different
18 agencies and everybody was in agreement that this
19 was the best plan of action for the resource, to
20 manage it as a whole.

21 The noise mitigation plan potential
22 impacts were identified, especially with
23 piledriving and steamblow. And for the
24 piledriving what was decided was that different
25 methods of mitigation were explored, and the use

1 of a curtain to dampen the noise was the one that
2 was decided upon.

3 As far as the predator and corvid
4 control plan, all surfaces on the power plant that
5 are in line of sight of potential prey species in
6 the Hayward area regional shoreline will be fixed
7 with perch deterrents. There is one, for example,
8 that is called Nix-Alight, which is basically a
9 series of prongs that preclude the raptors from
10 perching.

11 Another element that has been previously
12 discussed is that the U.S. Fish and Wildlife
13 Service has supplied the applicant with a list of
14 tree species that discourage both raptor perching
15 and discourage corvid and gull nesting. And
16 they're the ones that are egg predators and chick
17 predators.

18 And as far as the biological assessment,
19 that detailed, we will be submitting a final
20 version of the biological assessment that contains
21 these mitigation plans. It also details several
22 other aspects of the project.

23 Those are the four main elements.

24 Q Okay. I'd like --

25 HEARING OFFICER FAY: Is it your

1 impression now that the California Department of
2 Fish and Game and the U.S. Fish and Wildlife
3 Service are, at least at this point in their
4 review, are supportive of the mitigation plan?

5 MR. HARTMAN: Yes. We worked quite
6 closely. We had several workshops with all of the
7 agencies involved, and went through several
8 iterations on all of these plans until everyone
9 was satisfied.

10 HEARING OFFICER FAY: Mr. Wheatland.
11 Didn't mean to cut in.

12 MR. WHEATLAND: That's okay, no; by all
13 means.

14 BY MR. WHEATLAND:

15 Q In addition, Mr. Hartman, we have agreed
16 also to -- that is the applicant has agreed to act
17 to facilitate an agreement between the City of
18 Hayward and the East Bay Regional Park District to
19 effect a long-term lease of an additional
20 approximately 30 acres near the mitigation
21 property, is that correct?

22 A That is correct. That is -- sorry for
23 that oversight. That's part of the plan to manage
24 the Hayward area regional shoreline in the
25 vicinity of the Russell City mitigation parcel, to

1 manage it more as a whole, there was an adjacent
2 property that -- that's where the 30 acres, over
3 30 acres of salt marsh is going to be enhanced,
4 enhanced tidal flow.

5 Q And also in addition the applicant has
6 agreed to provide an endowment that will total \$1
7 million to the East Bay Regional Park District;
8 and a second endowment of \$500,000 to HARD and the
9 East Bay Regional Park District, is that correct?

10 A Correct.

11 Q And then finally the applicant has also
12 agreed to a package of mitigation in the vicinity
13 of the radio tower relocation, including the
14 relocation of a structure, the paving of the
15 parking lot and the street, and additional
16 landscaping in the vicinity of the parking lot, is
17 that correct?

18 A Correct.

19 MR. WHEATLAND: The witness is available
20 for questions or cross-examination.

21 HEARING OFFICER FAY: Mr. Ratliff.

22 MR. RATLIFF: No.

23 HEARING OFFICER FAY: Any other parties?
24 East Bay Parks, do you have any questions of the
25 witness?

1 MR. TONG: None.

2 HEARING OFFICER FAY: All right, thank
3 you very much for your testimony.

4 Mr. Wheatland, did you want to move Mr.
5 Hartman's --

6 MR. WHEATLAND: Yes, please, I'd like to
7 move those portions of Mr. Hartman's testimony on
8 biology in exhibits 2 and 3 into evidence.

9 HEARING OFFICER FAY: Okay. Any
10 objection? Hearing none, so moved.

11 Mr. Ratliff, for staff?

12 MR. RATLIFF: Yes, the staff witness on
13 biological resources is Stuart Itoga.

14 HEARING OFFICER FAY: Please swear the
15 witness.
16 Whereupon,

17 STUART ITOGA
18 was called as a witness herein, and after first
19 having been duly sworn, was examined and testified
20 as follows:

21 MR. RATLIFF: Mr. Fay, before we start
22 with the witness I wanted to perhaps go into an
23 issue that is not a -- issue, but is an issue that
24 I think is raised by the prior testimony. And
25 that has to do with the incorporation of what is

1 essentially the settlement agreement between the
2 Park District and the applicant, and how that
3 would be recognized, and whether it would be
4 recognized in the decision, itself.

5 The applicant is proposing that it be
6 incorporated directly into the decision as a
7 condition of certification. The staff has some
8 wariness about incorporating third-party
9 agreements into the Energy Commission decisions,
10 as a general rule.

11 And in particular we're wary here
12 because, although we aren't sure we fear that
13 there may be -- it could result in conflicts
14 between the other conditions of certification that
15 the staff is proposing and the terms of the
16 settlement agreement, itself.

17 So we might end up with conditions of
18 certification that might be working at cross-
19 purposes. In fact, the applicant identified one
20 such inconsistency already, and I'll get to how we
21 think we ought to handle that later.

22 But what I would suggest for now is that
23 if, in fact, the Commission thinks that it's
24 important to incorporate a third-party agreement
25 as a condition in the Commission decision, our

1 strong preference would be to do so by reference,
2 and not by the reprinting of the conditions, as
3 have been offered by the applicant.

4 And we would prefer to do it with an
5 express proviso that those conditions are
6 incorporated into the decision by reference, but
7 only to the extent they're not inconsistent with
8 the other conditions that the Commission is
9 adopting.

10 Now we understand Mr. Wheatland pointed
11 out that there is a conflict between Bio-10, which
12 is a staff-proposed condition and the memorandum
13 of understanding concerning when the mitigation
14 property would have to be turned over to the Park
15 District.

16 And we would propose that we try to
17 discuss that with the applicant, and try to
18 reconcile that apparent discrepancy in what the
19 Park District has agreed to with the applicant,
20 and what the Energy Commission Staff has
21 recommended as a condition. That we try to
22 address that directly by altering our condition,
23 if need be.

24 But we would prefer not to have the
25 memorandum of understanding placed in its express

1 terms as conditions into the decision, itself.

2 I want to state that right at the outset
3 before Mr. Itoga testifies, because that's really
4 not the point of his testimony.

5 HEARING OFFICER FAY: Mr. Ratliff, one
6 of the things that the Committee would need, if
7 they're going to entertain a request, is to know
8 that unless staff has a substantive disagreement
9 with the MOU, that to the maximum extent possible
10 the terms of the MOU were incorporated with any
11 revised language you come up with, to effectuate
12 the interests of those two parties, unless they're
13 incompatible with the staff's position.

14 MR. RATLIFF: Well, we aren't aware of
15 any such disagreements. And it's for the very
16 reason that we aren't aware and aren't sure that
17 we would like to do it by reference, and with the
18 proviso that I mentioned earlier, so that there
19 would be none.

20 HEARING OFFICER FAY: Okay, so you
21 envision something that would be tighter than
22 merely a reference, with the exception of things
23 that disagree with staff conditions, that in
24 effect it would be more refined than that?

25 MR. RATLIFF: Well, I mean I haven't

1 considered how you would write such a condition,
2 but I think it would be something like an
3 additional condition which would say the
4 provisions of the memorandum of understanding or
5 agreement, whatever it's called, between the Park
6 District and the applicant are hereby incorporated
7 by reference, except to the extent that they may
8 conflict with other conditions set forth in this
9 decision.

10 HEARING OFFICER FAY: But I think what
11 the Committee would need would be some explanation
12 of where those inconsistencies are, so --

13 MR. RATLIFF: Yeah. Well, we've
14 identified one so far.

15 HEARING OFFICER FAY: Yeah.

16 MR. RATLIFF: Our fear is that we may
17 not identify them before they occur, and then we
18 won't know. And that's because, you know, there
19 are several things in there, some of the language
20 is not, to our mind, entirely clear about how it
21 works. Other language is absolutely
22 unobjectionable because it has nothing to do with
23 our conditions, such as the amount of money to be
24 provided and when, for instance, for the
25 maintenance of the property.

1 But we are particularly worried about
2 the timing requirements, and that they be in
3 conflict with other timing requirements that we
4 had worked out in our minds as being important.

5 HEARING OFFICER FAY: For instance as to
6 when the --

7 MR. RATLIFF: When certain mitigation
8 documents were going to be due and when certain
9 provisions in the mitigation are going to take
10 place.

11 Now, I agree with you, we've found one
12 identifiable area, and I would like to try to work
13 that out separately so we don't have that
14 conflict. But there may be other conflicts that
15 we haven't identified. We don't want to see the
16 staff conditions undermined by that agreement.

17 PRESIDING MEMBER KEESE: Are you going
18 to leave in -- are you suggesting leaving in
19 condition 10?

20 MR. RATLIFF: We would prefer to see the
21 conditions that staff has provided, proposed, set
22 forth as we have set them forth in the FSA, with
23 the possible exception of Bio-10, which would need
24 to be modified if we're going to take into
25 consideration the fact that the Park District

1 apparently doesn't want to receive the land the
2 way we have proposed that it be received.

3 They want to have it improved first, as
4 I understand it. And they want to have the
5 endowment and the land occur later after the
6 improvements have occurred. I think that would be
7 the conflict that's been identified.

8 PRESIDING MEMBER KEESE: I hear what
9 you're suggesting, but don't have the same danger
10 of a conflict. If you leave 10 in and reference
11 this document, which prevails?

12 MR. RATLIFF: No, no, when I say 10, I
13 mean staff-proposed 10, not what you have -- not
14 the proposed 10 that you have from the applicant,
15 which includes basically incorporation explicitly
16 of the terms of the --

17 PRESIDING MEMBER KEESE: So therefore
18 the terms of the MOU become operative, period,
19 over --

20 MR. RATLIFF: No, --

21 PRESIDING MEMBER KEESE: I mean --

22 MR. RATLIFF: The reverse.

23 PRESIDING MEMBER KEESE: -- we're
24 suggesting there might be a conflict if you go --
25 I see a conflict if you go either way. How are

1 you going to make sure there's no conflict?

2 MR. RATLIFF: Well, the way we're going
3 to make sure there are no conflicts is that we
4 aren't going to include the MOU except by
5 reference, and then with a proviso that if there
6 is any conflict between the memorandum of
7 understanding and the conditions set forth
8 elsewhere in the decision, the conditions are
9 controlling.

10 HEARING OFFICER FAY: If that approach
11 is taken are you comfortable that the Department
12 of Fish and Game and the U.S. Fish and Wildlife
13 Service and other jurisdictional agencies that
14 were a party to all the negotiation on mitigation
15 would be satisfied?

16 MR. RATLIFF: Well, that's to say we
17 don't know what other parties actually were part
18 of the settlement agreement, but the agreement is
19 only signed by two entities, the Park District --
20 who are parties to this case, and that is the Park
21 District and the applicant.

22 But I can think of no reason why, for
23 instance, the Department of Fish and Game would
24 take issue with the conditions that we've proposed
25 thus far. We've heard no quarrel with any of our

1 conditions from any of the agencies.

2 HEARING OFFICER FAY: So staff doesn't
3 know if the MOU is acceptable to the agencies that
4 are not party to that agreement, is that correct?

5 MR. RATLIFF: We assume that it's -- I
6 think that the -- there's been an elaborate
7 process that's gone on for many months. I think
8 the U.S. Fish and Wildlife Service and the
9 Regional Board have been participants in the
10 process of trying to determine what the mitigation
11 would be, and what it would look like.

12 I assume that they're entirely
13 satisfied; and in fact, we know that the U.S. Fish
14 and Wildlife Service has stated that it is
15 satisfied. And I believe that's true of all the
16 agencies. I don't think that there's anything
17 about the settlement agreement which is disturbing
18 to any agency.

19 The only thing that's disturbing to
20 staff is the possibility that some of the timing
21 issues may, in fact, conflict with the timing
22 issues in the other staff conditions.

23 And we just weren't quite sure how they
24 would affect them, and that was the one issue that
25 we had with what's being proposed here.

1 PRESIDING MEMBER KEESE: I didn't hear
2 from applicant that they have a problem
3 necessarily. There's no problem as long as
4 there's no conflict. And it's just who's saying
5 mine's going to prevail that there's a conflict
6 here.

7 You're not disagreeing with the
8 timeframes outright that the applicant has
9 suggests that are a part of the MOU. You're
10 saying you understand that, you may be able to
11 accommodate that? Is that --

12 MR. RATLIFF: I think we probably can.
13 If the Park District has reasons for wanting to
14 delay the transfer of land, I don't know -- I mean
15 I think Mr. Itoga may be the better person to
16 address that. But I don't see why, in terms of
17 the biological impact, why we should disagree with
18 that, because I don't think that goes to the
19 impact, itself.

20 HEARING OFFICER FAY: Perhaps we can
21 move ahead with Mr. Itoga's testimony. But I
22 would like to ask the Park District's
23 representative to address this question about the
24 MOU.

25 I'm just thinking that perhaps it would

1 be better to do after we've actually heard the
2 substantive testimony, and then your comments
3 could incorporate everything that we've heard on
4 this issue.

5 We certainly want to take the Park
6 District's concerns into account. They're a party
7 in this case.

8 Anything further, then, on this item?

9 MR. RATLIFF: No.

10 HEARING OFFICER FAY: Okay, why don't
11 you go ahead with Mr. Itoga.

12 MR. RATLIFF: Okay.

13 DIRECT EXAMINATION

14 MR. ITOGA: In assessing the potential
15 impacts that the Russell City Energy Center might
16 have on biological resources, we worked closely
17 with the applicant, state and federal regulatory
18 agencies, as well as the East Bay Regional Park
19 District, and the Hayward Area Recreation
20 District.

21 Primary biological resource concerns
22 associated with the proposed project were habitat
23 loss, fill of wetlands, that the proposed project
24 could provide new perch sites for avian predators
25 of local sensitive species; construction noise

1 could potentially disturb reproductive behavior of
2 the local sensitive bird species; and that there
3 could be potential migratory bird collisions with
4 newly constructed transmission line and overhead
5 ground wires.

6 The applicant has proposed measures to
7 mitigate these potential impacts to what staff and
8 the other regulatory agencies feel that once they
9 were finalized and implemented would reduce these
10 potential impacts to levels less than significant.

11 While staff and the other regulatory
12 agencies have concluded that mitigation proposed
13 by the applicant would reduce the potential
14 impacts to levels less than significant, only
15 preliminary agency approval for the wetland
16 mitigation plan has been expressed to the
17 applicant.

18 Conceptually the plan appears sound,
19 but specific details concerning actions necessary
20 to achieve desired objectives still need to be
21 finalized.

22 The applicant will need to submit
23 additional information to support their proposed
24 wetland mitigation plan. And this information
25 must be received and reviewed by Fish and Wildlife

1 Service, Army Corps of Engineers, and the Regional
2 Water Quality Control Board, as well as staff,
3 before Fish and Wildlife Service can issue their
4 biological opinion, the Army Corps can issue their
5 404 permit, and the Regional Board can issue their
6 401 certification.

7 So staff has proposed biological
8 resources conditions of certification that would
9 insure the project owner demonstrate compliance
10 with applicable LORS prior to any site
11 mobilization activities.

12 And staff concludes that if the project
13 is constructed and operated in compliance with all
14 applicable LORS and conditions, the proposed
15 project will not adversely impact biological
16 resources in the proposed project area.

17 BY MR. RATLIFF:

18 Q Does that complete your testimony?

19 A Yes, it does.

20 HEARING OFFICER FAY: Would you like to
21 move that now?

22 MR. RATLIFF: Yes, please.

23 HEARING OFFICER FAY: All right, any
24 objection? We direct that be entered into the
25 record at this point.

1 Is Mr. Itoga available?

2 MR. RATLIFF: Yes.

3 HEARING OFFICER FAY: Mr. Wheatland, any
4 cross-examination?

5 MR. WHEATLAND: No, I have no questions.

6 HEARING OFFICER FAY: Well, if we could
7 have Mr. Itoga and Mr. Hartman sort of on-call,
8 we'd like Mr. Tong to come up from the Park
9 District and please reflect on this question about
10 how to and whether to incorporate the MOU between
11 the Park District and the applicant into the CEC
12 decision.

13 MR. TONG: Thank you, yes. The
14 agreement that the Park District and the applicant
15 has entered into was very carefully crafted. And
16 the preference of the Park District would be to be
17 as specific as possible.

18 However, we could certainly live with
19 the suggestion of the revised language per the CEC
20 Staff Counsel, especially given an incorporation
21 by reference, as well as working out the timing of
22 the conditions of certification.

23 HEARING OFFICER FAY: And is it your
24 understanding that as per Mr. Ratliff's
25 recommendation that if the MOU between the Park

1 District and the applicant were included by
2 reference in the decision, with a caveat that
3 excluded any portions that were inconsistent with
4 other conditions of certification in the decision,
5 that you would, for the most part, have a document
6 enforceable through the Commission decision, but
7 that in a few potential areas that might not be
8 the case, but then in fact you still have a
9 contract between the East Bay Parks and Calpine
10 that is fully enforceable? Is that your
11 understanding?

12 MR. TONG: Yes. And at this point I do
13 not know of any conflicts in terms of other
14 provisions. But, yes, that would be my
15 understanding.

16 PRESIDING MEMBER KEESE: Conflicts other
17 than the dates which --

18 MR. TONG: That initial implementation
19 date.

20 PRESIDING MEMBER KEESE: -- the parties
21 have indicated they'd try to reconcile?

22 MR. TONG: Right.

23 HEARING OFFICER FAY: I'm not aware of
24 any conflict on substance. And I'd like to have
25 anybody correct me if I'm wrong. And I think all

1 the parties here want to protect the resource to
2 the maximum extent possible.

3 And the difference in timing, unless it
4 hurts that effort to protect the resource, is
5 probably not significant to the Committee.

6 Well, any further advice to us, then, on
7 how to handle this matter?

8 MR. TONG: Again, the Park District
9 could go either way.

10 HEARING OFFICER FAY: Okay. Thank you.
11 Appreciate your advice on that.

12 Okay, --

13 MR. RATLIFF: I would be glad to provide
14 something written in terms of language if that
15 would be helpful.

16 HEARING OFFICER FAY: Yes, that would
17 be. And I think if we could have ideally some
18 joint language come in with the briefs, that has
19 been at least an attempt was made to share it with
20 the applicant, so we have a chance of having an
21 agreement on this.

22 And if there's disagreement, then the
23 briefs could express the degree of disagreement.

24 MR. WHEATLAND: I'd like to state for
25 the record today, having heard Mr. Ratliff's

1 approach is acceptable to the Park District, it
2 certainly is acceptable to the applicant. And I
3 believe we can work this issue out.

4 HEARING OFFICER FAY: Great. Well, I
5 guess there's the answer. So, if you could
6 provide that with the briefs, then that would be
7 very helpful. Good.

8 MR. ARMAS: Mr. Fay, because the
9 condition also makes reference to property owned
10 by the City of Hayward, we welcome an opportunity
11 to review whatever language is crafted by the
12 parties.

13 HEARING OFFICER FAY: Yeah, let's please
14 be sure that they're included in the loop on that,
15 as well as any other parties in the case, just as
16 a matter of formality.

17 Are there any other parties or agencies
18 that wish to be heard on biological resources?

19 Okay. Now, I'd like to move to public
20 comment on that topic. And, yes, ma'am, please
21 come forward and give us your name and the benefit
22 of your views. And you're putting something down
23 there on the documents.

24 MS. DelFINO: My name is Janice DelFino;
25 I'm CoChair of the Citizens Advisory Committee to

1 the Hayward Area Shoreline Planning Agency known
2 as HASPA.

3 There is, in my mind, anyway, there's
4 some confusion about this latest document,
5 biological resources Bio-10, page 8, verification,
6 within 60 days of project certification the
7 project owner must provide written verification to
8 the CPM that the required habitat compensation has
9 been purchased, the endowment is in place to fund
10 perpetual compensation habitat management, and the
11 lease agreement for 30 acres of salt marsh habitat
12 that has been finalized with the City of Hayward.

13 The reason I'm bringing this up, there's
14 a need to incorporate this project, the
15 applicant's project, with this project that is
16 going on right now, or it has been stopped because
17 of the snowy plover habitat to the ponds that are
18 in this to the west. And --

19 HEARING OFFICER FAY: Which project has
20 been stopped?

21 MS. DeLFINO: The HARPD marsh project,
22 the restoration and enhancement project. And
23 there are channels that are being brought in,
24 there's a channel here and there are tide gates.
25 And this is the area, this is the salt marsh

1 habitat. And this is the City's property.

2 So, I'd like to see the incorporation of
3 the two projects, so the HARPD project will
4 resume, I think, in maybe late August or September
5 when the snowy plovers have finished their nesting
6 and are out of the area.

7 So, I don't know what's going to happen
8 if one project continues and the applicant's
9 project does not. If there is a delay --

10 PRESIDING MEMBER KEESE: You're asking
11 that the two projects be consistent?

12 MS. DeLFINO: Yes, and in --

13 PRESIDING MEMBER KEESE: And be operated
14 together?

15 MS. DeLFINO: Together, yes. I mean it
16 would make sense, it would be -- financially it
17 would make sense. So, anyway, that's one thing.

18 PRESIDING MEMBER KEESE: And do we have
19 any party here who is responsible for the
20 restoration project?

21 MS. DeLFINO: You mean HARPD's project?

22 PRESIDING MEMBER KEESE: Yes, is that a
23 City project? Is that a Park project?

24 MS. DeLFINO: No, it's a Hayward Area
25 Recreation Park District project. But it's

1 possible to coordinate, I mean all the --

2 PRESIDING MEMBER KEESE: Yeah, well, I
3 recognize, I'm just --

4 MS. DelFINO: -- agencies have --

5 PRESIDING MEMBER KEESE: -- wondering if
6 we have anybody in this room who's responsible for
7 that --

8 MS. DelFINO: Oh, I think Mr. Tong --

9 PRESIDING MEMBER KEESE: -- project.

10 MS. DelFINO: -- Mr. Tong might be able
11 to respond to that. And all the agencies know
12 about the project. I mean it's --

13 PRESIDING MEMBER KEESE: Okay, so your
14 question is --

15 MS. DelFINO: -- been certified, it's
16 been permitted.

17 PRESIDING MEMBER KEESE: -- is there an
18 inconsistency here, or do we need to do something
19 more to make sure there's cooperation?

20 MS. DelFINO: Well, the inconsistency
21 would be that if Calpine's project is delayed, but
22 the HARPD project is going forward, then one is
23 stopped and the other is going.

24 PRESIDING MEMBER KEESE: Okay, and the
25 HARPD project is going to take place when?

1 MS. DelFINO: It has been started, but
2 it had to be stopped because of first weather
3 conditions, and then the snowy plovers were, you
4 know, it's a --

5 PRESIDING MEMBER KEESE: And so when is
6 its season?

7 MS. DelFINO: They'll probably be out of
8 the area in late August or September. So that
9 HARPD project will resume. I know it's not --
10 but, I know it's not --

11 PRESIDING MEMBER KEESE: I don't think
12 we're going to be done here --

13 (Laughter.)

14 PRESIDING MEMBER KEESE: We're not going
15 to be finished in August.

16 MS. DelFINO: But, what I'm trying to
17 get across is there should be --

18 PRESIDING MEMBER KEESE: Coordination.

19 MS. DelFINO: Yes.

20 PRESIDING MEMBER KEESE: Thank you, I
21 understand.

22 MS. DelFINO: Definitely. And since I
23 am the CoChair of the CAC, I just wanted to
24 compliment Mr. Hilson on his statement. I think
25 you have a copy of it. He is Chair of HASPA.

1 But one of the things that the Citizens
2 Advisory Committee is still concerned about is the
3 screening or so-called wave. And, you know, it
4 was proposed by humans. I think it could be
5 changed by humans. The idea of having to screen
6 an area.

7 If Hayward wants a power plant, and the
8 applicant wants a power plant, let's have them be
9 proud of a power plant. They don't have to screen
10 it.

11 And the screening requires that Nix-
12 Alight. And the Nix-Alight requires maintenance,
13 monitoring and probably repair. So, I don't think
14 it's going to resolve the predator problem. But
15 it's possible to just eliminate that screening.

16 And I wanted to know who will be on the
17 spot day after day monitoring the predator
18 management or predator control, or who will be
19 there? It would have to be during nesting season;
20 it would have to be a day-by-day person. And we
21 have no answer to that question. And it's not in
22 any -- it's all to come later.

23 In fact, there are a lot of things that
24 are coming later that we need to be aware of. And
25 you have to be aware of.

1 PRESIDING MEMBER KEESE: It's called the
2 project manager, the PM, I think CPM is the title.
3 And the project manager's responsible for seeing
4 that everything that's in these documents takes
5 place.

6 Now, I am not aware of your specific
7 question, is there another person who's
8 responsible for that. But it's up to the project
9 manager to see that all the conditions are
10 fulfilled through whatever staff or consultant is
11 necessary to make sure that happens.

12 MS. DeLFINO: We were told in one of the
13 workshops, and we've attended all the workshops at
14 the CEC and such, that there would be a day-by-day
15 or on-day-and-day person. It's hard to -- is that
16 realistic? I mean we hope that there would be
17 someone, but will there be someone --

18 PRESIDING MEMBER KEESE: Yeah, this is
19 probably kind of -- we're going to take a break in
20 a little while. Why don't you ask staff again.
21 I'm sure staff would be able to answer that
22 question for you.

23 MS. DeLFINO: All right, well, I want to
24 be sure that someone is there. You can't rely
25 upon East Bay Regional Park District; they have

1 plenty to do without monitoring. And humans --
2 humans, but the rest of us who use the shoreline
3 are not going to be there day after day. And we
4 want to be sure that the predators are under
5 control.

6 I thank you very much.

7 HEARING OFFICER FAY: Thanks for your
8 comments.

9 Just a moment, before we move on.
10 You're welcome to sit down. I wonder if you could
11 leave your map up here, though, just for a little
12 while, so we can all see that.

13 MS. DeLFINO: That's not very clear.

14 HEARING OFFICER FAY: Well, that's fine.
15 Yeah, if you can leave it there for a minute.

16 PRESIDING MEMBER KEESE: We see it
17 pretty good here.

18 HEARING OFFICER FAY: Mr. Tong, do you
19 know if there is coordination with this effort?
20 We heard the applicant's witness say that this
21 project is bringing together a lot of wetlands
22 enhancement projects. Is this being coordinated?

23 MR. TONG: The Park District operation
24 staff is coordinating with the HARPD staff on the
25 restoration project. To answer the specific

1 question, I don't have that level of detail. But
2 the operational staff would.

3 HEARING OFFICER FAY: They know about
4 the other project in --

5 MR. TONG: Yes, they do.

6 HEARING OFFICER FAY: They're going to
7 try to maximize the two projects?

8 MR. TONG: Yes.

9 HEARING OFFICER FAY: Okay. Thanks.
10 I'd also like to ask Mr. Itoga, what are the
11 provisions for monitoring? Is there a constant
12 monitor in place, as --

13 MR. ITOGA: Not so much a constant, it
14 wouldn't be like a 24-hour per day, seven day a
15 week monitor, but there are conditions that we've
16 included in our FSA that would require a
17 designated biologist be assigned to the project.
18 So they'd be responsible for the monitoring,
19 making sure that all the conditions are complied
20 with. And making sure that the resources are
21 protected.

22 HEARING OFFICER FAY: And is this the
23 kind of monitor that goes to the site regularly to
24 be sure that the construction crews are following
25 the rules and taking care to be mindful of the

1 animals?

2 MR. ITOGA: Yes, that is correct. That
3 is the duty of the designated biologist. And they
4 also have the power to halt construction if they
5 see violations.

6 HEARING OFFICER FAY: Okay. Thank you.
7 Yes, we have some more comments. Mr. Beckman.

8 MR. BECKMAN: I want to specifically
9 address the question of the impact of noise on
10 wildlife. But before I do so, I'd like to say
11 that if something as important as a memorandum of
12 understanding between Calpine and East Bay
13 Regional Park District has been brought to this
14 hearing, it's important that members of the public
15 also see it. When will we see that, Mr. Fay?

16 HEARING OFFICER FAY: That was -- I
17 don't have the date -- that was docketed on June
18 3rd at the Commission. So that's been a public
19 record since June 3rd. I don't know if it was
20 served on the parties in the case, but since
21 you're not an intervenor it wouldn't have made any
22 difference.

23 But I'm sure that the Public Adviser can
24 make this available to you if you'd like copies.
25 In fact, I've got one extra copy, myself. But

1 it's certainly available to the public.

2 MR. BECKMAN: I will be providing some
3 written comments on the question of the impact of
4 noise on wildlife.

5 I wanted to direct your attention simply
6 to the issue here. The staff report makes the
7 assertion that the staff doesn't anticipate any
8 adverse operational noise impacts to wildlife at
9 the projected level referring to the perimeter of
10 the energy plant.

11 There's absolutely no support for that
12 assertion. Although the law requires that there
13 be an analysis of these impacts on animals, I fear
14 that our sensibilities are such that we're
15 dismissive of the impacts of noise on wildlife.

16 And yet it ought to be one of the most
17 important analyses that is done for this power
18 plant. This power plant is being sited in one of
19 the most ecologically environmentally sensitive
20 sites possible in the Bay Area. And for that
21 reason these kinds of impacts ought to have the
22 highest priority.

23 The problem with this analysis is that
24 it relies on an A weighted decibel. The A
25 weighting is fitted to the human ear. And I

1 seriously doubt that the salt marsh harvest mouse,
2 which is about an inch long, has the same auditory
3 system that a human has. Or that ducks or geese
4 or any of the other birds out there do.

5 Not a lot is known about this, and I
6 have made the comment in the CEC workshops on
7 environmental analysis that the state of the
8 science, the poor state of the science is not an
9 excuse for not doing a better analysis.

10 Thank you.

11 PRESIDING MEMBER KEESE: Thank you.

12 HEARING OFFICER FAY: Thank you. Yes,
13 ma'am.

14 MS. SAIMA-BARKLOW: I'm Viola Saima-
15 Barklow, and you have my card. I spoke before.

16 First of all, I'd like to go on record
17 on behalf of the Citizens Advisory Committee to
18 HASPA, and that's to express our gratitude to East
19 Bay Regional Park District, to their attorney,
20 their naturalists and their operations managers,
21 for making their major effort and contributions to
22 this whole process.

23 East Bay Regional Park District is in
24 the business of wildlife protection and habitat
25 enhancement, but they're also protecting our

1 public investment of millions of dollars on the
2 Hayward shoreline. And for that we are grateful.

3 If Calpine or some other energy
4 generator eventually builds this plant and the
5 wetland mitigations take place, I'm thinking about
6 the purchase of the waste management property and
7 also the proposed management of the City of
8 Hayward property, then I believe that most or all
9 of the lands that HASPA has been concerned with
10 north of highway 92 will be restored, or in the
11 process of being restored. And that's a good
12 thing.

13 It actually is a major accomplishment
14 for HASPA that this would have taken place. Now
15 we can turn our attention to south of 92 where
16 restoration has already begun on the Cargill
17 Bomberg tract to be called Eden Landing Ecological
18 Reserve. And then, of course, the Cargill salt
19 pond sale is under negotiation or underway, and so
20 HASPA will be mightily involved with what goes on
21 south of 92.

22 So we have a future ahead of us that
23 looks pretty good.

24 I wanted to make a comment about in
25 response, or a question to Mr. Hartman's comment

1 about, I believe he mentioned gull nesting. And
2 he was referring to the wetlands mitigation that's
3 being offered by Calpine.

4 And I'd like a clarification on that,
5 because I thought he was referring to trees, and
6 as far as I know I've never seen a gull nesting in
7 a tree. All the gulls I've ever seen have been
8 nesting on the ground.

9 We do have a species of gulls nesting on
10 the ground at the Alameda National Wildlife
11 Refuge. So I would like somebody to look into
12 that question. Is there anything in this
13 mitigation that would provide gull nesting on the
14 ground? Probably not, but just that's something
15 that he brought up today, and I'd like that
16 checked out.

17 And we, of course, do have gulls out on
18 the Hayward shoreline because gulls need fresh
19 water to drink, and they need fresh water to bathe
20 in.

21 So, those are my comments. Thank you
22 very much.

23 HEARING OFFICER FAY: Thank you. All
24 right, other comments on biological resources?

25 MS. JUNGE: Sheila Junge, again. I'm a

1 little unclear as to the conflict on the timing.
2 If I understand what's being said about the staff
3 position is that the applicant would acquire the
4 property within 60 days after certification, is
5 that correct?

6 MR. RATLIFF: Yes.

7 MS. JUNGE: And is the applicant's
8 position that they would not acquire the property
9 until they actually begin construction? Am I
10 correct in that?

11 MR. WHEATLAND: No, actually that's --

12 HEARING OFFICER FAY: Well, let's --

13 MR. WHEATLAND: Sorry.

14 HEARING OFFICER FAY: Yeah, let's try
15 and avoid the questioning here. Basically the
16 Park District wanted the applicant to do some
17 things before they transferred the property.

18 Staff's recommendation that it happen at
19 a time certain was different than that. Both of
20 them have agreed that as long as the acquisition
21 and transfer takes place they're willing to be
22 consistent with the negotiation that took place
23 between the Park District and applicant, as to
24 times for transfer, if that --

25 MS. JUNGE: Okay. I guess I'm less

1 concerned about when the transfer takes place, and
2 my major concern is that the mitigation happen; it
3 at least be started before any construction
4 starts.

5 I'm interested that the mitigation
6 happen really well. Many of us have seen
7 mitigation that's done in a very poor manner. And
8 despite the fact that they all have monitoring
9 plans and they have biologists assigned to them,
10 some of them just sort of wave a magic wand over
11 it and really don't do a very good job.

12 So, I'm very concerned that this is done
13 well, and that there is someone whose feet to be
14 held to the fire if it's not. And I'd be real
15 interested in getting information on how that's
16 accomplished.

17 I really hope, you know, everything
18 sounds great, I really hope that that's not
19 necessary. But I'm just concerned, and having a
20 means -- the CEC is in Sacramento and this project
21 is here. At least the mitigation is here and not
22 somewhere off in the distance. But I'm really --

23 PRESIDING MEMBER KEESE: I would suggest
24 that you talk to Roberta or staff offline here in
25 a moment, but I will assure you that the Energy

1 Commission does a rather good job of enforcement.
2 I would think the applicant would let you know
3 about that.

4 And that on occasions when we've had
5 failures it rises to the level of our whole
6 Commission; all five Commission Members hearing it
7 and making sure that enforcement does take place.
8 So, we do a pretty good job. I think you'll be
9 very pleased with it.

10 MS. JUNGE: I'm really glad to hear
11 that. Can you shut them down if it really comes
12 down to --

13 PRESIDING MEMBER KEESE: Yes, we can.

14 HEARING OFFICER FAY: Yes.

15 PRESIDING MEMBER KEESE: In fact, the
16 scientists -- the project manager can shut them
17 down. The scientists can shut them down.

18 MS. JUNGE: Okay.

19 PRESIDING MEMBER KEESE: Immediately
20 until it's taken care of.

21 MS. JUNGE: I'm really glad to hear
22 that, thank you.

23 PRESIDING MEMBER KEESE: Thank you.

24 HEARING OFFICER FAY: I'd just like to
25 mention, as well, -- thank you -- but, in

1 addition, and this goes for all the conditions of
2 certification, not merely on biological resources,
3 if the people in the community, who can have a
4 copy of the final decision when it comes out, look
5 it up on the webpage, if they see a condition that
6 they think is not being complied with by the
7 project, they call the Energy Commission, the
8 Compliance Office, and point that out.

9 If they don't get satisfaction, as the
10 Commissioner said, there's a process to appeal
11 that right up to the full Commission. There's a
12 lot of very specific steps that are built into our
13 conditions of certification.

14 For instance, regarding noise. If
15 people are disturbed by noise during construction
16 and think there's a violation going on, they can
17 call up; they're given the number plus a form they
18 can file.

19 So the Energy Commission is very used to
20 following up on these conditions; and they're not
21 just written down and we hope that the applicant
22 will observe them. There's an enforcement crew, a
23 whole branch of the Siting Division.

24 Any other comments on biological
25 resources? Ms. George.

1 MS. GEORGE: Barbara George, Women's
2 Energy Matters. I wanted to comment that the
3 marshlands are nurseries for fish and animals and
4 plants, birds. Sixty percent of all life comes
5 from marshlands like this.

6 So, I wanted to know whether the staff
7 has looked at the impacts on babies of all these
8 species, which are much greater than impacts on
9 adult creatures.

10 And they are very vulnerable, as the
11 earlier gentleman said, to noise, as well as air
12 and water pollution, changes in the temperature
13 and other ecological impacts.

14 And I don't know whether this drains
15 into the Bay, puts hot water into the Bay, but
16 that is a serious issue that I understand with
17 some power plants.

18 I also -- are we going to have a section
19 on environmental justice in this afternoon's --

20 HEARING OFFICER FAY: There is, yes,
21 there is.

22 MS. GEORGE: Okay. Well, I wanted to
23 point out now low income people tend to rely on
24 fish that they catch in the Bay. And I don't know
25 whether you can fish off the Hayward shoreline or

1 not, but that is a significant food source for
2 some folks in our community.

3 And I don't know whether that has been
4 studied as either environmental justice or
5 actually both an environmental justice issue and
6 biological resource issue.

7 And then I also wanted to say that there
8 was a question from another person in the audience
9 about the site monitoring plans. And she was
10 really concerned that that was going to be
11 monitored on a daily basis. And afterwards I
12 didn't quite hear the answer to the question, but
13 it sounded like it was not going to be monitored
14 on a daily basis, or on a 24-hour a day basis.
15 And I would like to know just exactly how much
16 monitoring there will be there.

17 And finally I'd like to say that I
18 really respect the Park District for having been
19 on the job trying to do something about this
20 project. But I'm concerned about public agencies
21 that sell out cheap. And I really don't think
22 that they got a lot for, you know, from, this
23 corporation could afford a great deal more than \$1
24 million and a couple of little parcels of
25 marshland. And I think that's regrettable that a

1 company that's making billions and billions and
2 billions of dollars off of our resources should
3 get away with as little as they have offered in
4 mitigation.

5 PRESIDING MEMBER KEESE: Thank you.

6 HEARING OFFICER FAY: Thank you. Any
7 other comments on biological resources from the
8 public?

9 PRESIDING MEMBER KEESE: Hearing none,
10 we'll take a ten-minute break. However, I do want
11 to tell you what the plan is. We have three
12 items, socioeconomic resources, soil and water
13 resources and transmission system engineering. We
14 have three items left.

15 We will not come back tomorrow. We will
16 conclude today. We may not make 5:00, but we will
17 conclude today. Hopefully we will conclude before
18 dinner.

19 Thank you. In ten minutes we'll see you
20 back here.

21 (Brief recess.)

22 HEARING OFFICER FAY: We've finished
23 taking testimony on biological resources. Our
24 next area is socioeconomic resources.

25 Mr. Wheatland.

1 MR. WHEATLAND: You have our testimony
2 on socioeconomic resources. It's set forth in
3 exhibit 2, sponsored by Tamer Kirac. There are no
4 differences between us and the staff on this
5 issue.

6 I would move that Tamer Kirac's
7 testimony be received into evidence.

8 HEARING OFFICER FAY: Is there
9 objection? Hearing none, so moved.

10 We'll move to the staff now. Mr.
11 Ratliff or Mr. Caswell.

12 MR. CASWELL: In his absence, we have
13 staff, Daniel Gorfain, who was the CEC Staff
14 person that analyzed socioeconomic. And we will
15 submit his testimony as exhibit --

16 HEARING OFFICER FAY: Okay, we'd like
17 Mr. Gorfain to please stand and be sworn.
18 Whereupon,

19 DANIEL GORFAIN
20 was called as a witness herein, and after first
21 having been duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. RATLIFF:

25 Q Mr. Gorfain, did you prepare the portion

1 of the staff testimony in exhibit 1 entitled
2 sociology?

3 A Yes, I have.

4 Q Is it true and correct to the best of
5 your knowledge and belief?

6 A Yes, it is.

7 Q Do you have any changes to make in the
8 testimony now?

9 A No, I do not.

10 Q Can you summarize it very briefly?

11 A We looked -- in the socioeconomic
12 analysis we looked at a variety of factors that
13 our CEC could effect. We analyzed the population
14 characteristics of this area. We analyzed the
15 employment and economic opportunities associated
16 with the project; potential impact of housing on
17 employment, on public services.

18 And also we did an analysis of
19 environmental justice, primarily from the
20 standpoint of determining whether following
21 federal guidelines the population could be
22 considered to be an environmental justice
23 population; that is whether the population both
24 exceeds 50 percent in minority and 50 percent in
25 terms of poverty.

1 And the finding on that was that while
2 the minority population exceeds 50 percent, the
3 poverty population was well below that. And
4 therefore we concluded that there is no
5 environmental justice population within the six-
6 mile radius area surrounding the plant.

7 Q Thank you. Does that conclude your
8 testimony?

9 A I might also say that we also looked at
10 the potential fiscal impacts of the power plant on
11 the area, particularly on local government.

12 And that does conclude my testimony.

13 HEARING OFFICER FAY: Any cross-
14 examination, Mr. Wheatland?

15 MR. WHEATLAND: No.

16 HEARING OFFICER FAY: All right. What
17 I'd like to do is ask if the Parker Ventures,
18 Ltd., people from Parker Ventures, LLC, people are
19 here?

20 This would be a good time now to present
21 your witness if you'd like.

22 MR. REHON: Thank you.

23 HEARING OFFICER FAY: Counsel, if you'd
24 be comfortable taking a seat here with your
25 witness, at the table, if that works for you.

1 MR. REHON: Thank you very much. I'm
2 Peter Rehon, Rehon and Roberts, on behalf of the
3 intervenor Parker Ventures, LLC. With your
4 indulgence I'll have my witness sit, if you don't
5 mind.

6 HEARING OFFICER FAY: Now, Mr. Rehon,
7 there's a motion to strike before the Committee on
8 the basis that your testimony was not timely
9 filed. And we have still not seen the testimony
10 as per the standards, the requirements of the
11 Commission regulations.

12 So, the Committee's forced to grant that
13 motion to strike. Even though you're an
14 intervenor, we do require everybody to file timely
15 so that there's no surprise. However, as I
16 indicated to your associate, we'll certainly allow
17 this in as public comment. And it doesn't mean it
18 won't count. It can support other testimony, and
19 it just can't stand alone as a basis for a
20 finding.

21 But our reason for those requirements
22 are just to avoid surprise.

23 MR. REHON: Well, may I respond to that?
24 I mean I guess it might be a moot point if we're
25 allowed to present the testimony of Mr. Gimmy as

1 public comment, as opposed to a formal statement.
2 It's really of no moment to us as long as it's
3 given the same weight that any other testimony
4 that would be offered.

5 HEARING OFFICER FAY: Well, the
6 difference is what I just described. It cannot
7 alone form the basis for a finding.

8 MR. REHON: You mean the written
9 statement?

10 HEARING OFFICER FAY: His written or
11 oral testimony. Because it's not being received
12 as --

13 PRESIDING MEMBER KEESE: In other words,
14 if he's the only one testifying on an issue, and
15 staff -- either staff or applicant brought it up,
16 then it doesn't stand. If he's talking about
17 something that somebody else has also presented
18 on, his comments will be taken into consideration
19 on those issues.

20 MR. REHON: Well, allow me to respond,
21 then, on the issue of the motion to strike, if you
22 would. And I understand what you're saying. We
23 did, the intervenor did file a statement of the
24 witness' testimony, and a statement of his
25 qualifications.

1 We did it timely; we did it on June
2 10th. We gave notice to the applicant on June
3 10th, and we filed it with the Committee.

4 We don't intend to present any documents
5 and admit any evidence that's documentary.

6 So, insofar as the applicant has notice
7 of exactly what his testimony is, they do, in
8 fact, have that. We regard his testimony as
9 testimony on a contested matter. And under the
10 rules, your notice of the evidentiary hearing,
11 since he is testifying on a contested matter, it
12 was my understanding that the witness would be
13 allowed to testify, again within the parameters of
14 the notice that we provided, --

15 HEARING OFFICER FAY: Well, right. It's
16 not testimony, but he's allowed to comment and
17 we're going to hear it.

18 MR. REHON: Yeah.

19 HEARING OFFICER FAY: So that --

20 MR. REHON: Okay, well, I mean as long
21 as -- I don't want to make this a bigger issue
22 than it has to be.

23 HEARING OFFICER FAY: I don't think it
24 has to be.

25 MR. REHON: My concern, of course, is

1 that I wouldn't want the applicant to prevent the
2 Commission from hearing probative evidence. But
3 if they're allowed to do that, then --

4 PRESIDING MEMBER KEESE: We're going to
5 hear it.

6 MR. REHON: That would be great. Thank
7 you so much, I appreciate that.

8 Mr. Gimmy, would you be kind enough to
9 state your full name and business address, please.

10 MR. GIMMY: Arthur E. Gimmy, spelled
11 G-i-m-m-y. My address is 2330 Marinship Way,
12 Sausalito, California.

13 MR. REHON: And would you be kind enough
14 to summarize your educational background, please.

15 MR. GIMMY: I attended University of
16 California Los Angeles. I have a master of
17 science degree with a major in education.

18 MR. REHON: And would you summarize your
19 employment background relevant to real estate
20 appraisals?

21 MR. GIMMY: I worked at the Bureau of
22 Business and Economic Research at UCLA in the
23 1950s. I taught at UCLA in 1958. I've been a
24 full-time real estate and business appraiser since
25 1959.

1 MR. REHON: And are you a licensed real
2 estate appraiser?

3 MR. GIMMY: I'm a licensed real estate
4 appraiser in the State of California; and I'm a
5 Member of the Appraisal Institute since 1965.

6 MR. REHON: Now, are you familiar with
7 the property known as 3650 Enterprise Avenue in
8 Hayward?

9 MR. GIMMY: Yes, I am. That property
10 which is shown under the red marker is known as
11 the Enterprise Distribution Center.

12 MR. REHON: And this is for the
13 Commission's benefit, it is a copy of figure 11 of
14 the visual resources section of the staff report.

15 And the property is the property that's
16 adjacent on the west side of the project site, is
17 that correct?

18 MR. GIMMY: It's on the west side. It's
19 at the far end of where Enterprise Way ends. It
20 consists of two buildings; those are the objects
21 in white. Those are multitenant distribution
22 buildings. There's a total of 142,000 square feet
23 on about seven acres of land.

24 MR. REHON: And you were retained to act
25 as an expert in this matter?

1 MR. GIMMY: Yes.

2 MR. REHON: And what was your
3 assignment?

4 MR. GIMMY: My assignment was to prepare
5 a before-and-after appraisal of the real property
6 interest in this distribution center. The before
7 value representing the fair market value of the
8 real property without the project. And the after
9 value representing the fair market value of the
10 property with the project completed and in place.

11 MR. REHON: And what did you do to
12 complete that assignment?

13 MR. GIMMY: Before I answer that I do
14 want to say that this is a very common type of
15 assignment, even though the hypothetical condition
16 hasn't been completed yet, because condemnation
17 assignments virtually always deal with proposed
18 public projects.

19 Sorry about that, I --

20 MR. REHON: That's okay.

21 MR. GIMMY: -- wanted to make that
22 clear.

23 MR. REHON: Thank you. And, Mr. Gimmy,
24 what did you do to complete your assignment?

25 MR. GIMMY: I appraised the property in

1 the before condition. I investigated the rentals
2 being produced by this property. I interviewed
3 the broker that specializes in this type of
4 property and handles this property.

5 I analyzed rentals for competitive
6 properties; looked at sales of other distribution
7 warehouses. I obtained and analyzed the rental
8 income from this property. I should emphasize
9 that this property is not really an owner-occupied
10 property, but rather an investment property. And
11 it basically was acquired for the income that it
12 produces, or a return on investment.

13 I used the capitalization process, or
14 yield capitalization primarily to determine the
15 before value of this property.

16 MR. REHON: And what approach did you
17 take in coming to the conclusions that you came to
18 in this matter?

19 MR. GIMMY: Well, I used two of the
20 three standard approaches. I used the income
21 capitalization, and what they call the sales
22 comparison or market comparison approach, where
23 you look at sales transactions and develop unit
24 prices from transactions involving other similar
25 distribution and warehouse type properties.

1 MR. REHON: Did you use any other
2 approaches?

3 MR. GIMMY: Just the two.

4 MR. REHON: Just the two. And what are
5 the major factors regarding a plant of this type
6 which affect the value of adjacent property like
7 the subject property?

8 MR. GIMMY: There are a lot of potential
9 factors. The subject is not well researched. But
10 I and my staff member, Charles Bombock, conducted
11 an investigation. We interviewed planners
12 involved in other projects, in other counties in
13 California.

14 We looked at projects in different
15 locations along the California coast. We analyzed
16 the literature dealing with the impacts of
17 detrimental conditions, that's what it's known as
18 in the real estate business. We read and
19 researched articles dealing with detrimental
20 conditions, especially projects dealing with power
21 line projects and substations.

22 We reviewed appraisals that we had done.
23 And that wasn't mentioned earlier, but I have been
24 employed over a period of about 10 to 15 years
25 working on appraisals involving power line

1 projects in California as well as in Nevada and
2 Kansas.

3 I've appraised properties next to
4 refineries. I've been employed by both sides.
5 I've worked for Shell Oil Company; I've worked for
6 the United States Government.

7 I've appraised properties at the Geysers
8 that are owned by parties that lease land to
9 Calpine. And read whatever I could out of the
10 information that was provided about the project.

11 MR. REHON: Now, in doing --

12 MR. GIMMY: Actually didn't discuss the
13 impacts, I just --

14 MR. REHON: Well, could you describe the
15 impacts, please?

16 MR. GIMMY: Well, there's a lot of
17 things going on right now in today's market.
18 Typical impacts here would involve the visual
19 impact of this project, as far as the subject
20 property is concerned, it's going to be buried at
21 the end of this street, you won't even be able to
22 see it any more.

23 There's potential impacts. I've talked
24 to people who are experts in electromagnetic field
25 impacts, such as Mrs. Sage of Sage Associates. So

1 we have that factor and the perception of fear
2 that involves electromagnetic fields.

3 We have noise factors. We have emission
4 considerations that are relative to ionization and
5 other factors that are, I think, kind of unknown
6 at this time.

7 And then we have other factors that have
8 been developed just more or less in the last year
9 or so, the possible impact on a project as far as
10 its economics, due to potential terrorism.
11 Terrorism, for example, in New York, has involved
12 terrible increases in insurance costs as well as
13 obviously what happened in terms of property
14 damage and human life.

15 If a terrorist attack took place on a
16 power plant someplace in the United States, it
17 would be very widely publicized, and the impacts
18 obviously would be well known to everybody. And
19 that would have an effect, as far as I'm
20 concerned, on tenants, on the rentability of a
21 property.

22 I looked at all these factors. And the
23 way I finally approached this was that I felt that
24 this property, as far as the damage is concerned,
25 should be looked at under a best case and a worst

1 case scenario.

2 MR. REHON: Okay. You indicated that,
3 before we get to your conclusion, you indicated
4 that you talked to people. Did you talk to the
5 tenants?

6 MR. GIMMY: Yes.

7 MR. REHON: Okay. And you said you
8 looked at other projects. What projects did you
9 look at?

10 MR. GIMMY: Well, I looked at projects
11 up in Yuba City area, and in Pittsburg. I looked
12 at other power projects around California, such as
13 one in Redondo Beach, which is next to a marina.
14 I'm aware of a number of other projects up and
15 down the coast, such as those in Huntington Beach.

16 MR. REHON: Now, did any of these other
17 projects have any detrimental conditions that have
18 been established that you thought were applicable
19 to this one?

20 MR. GIMMY: It's very difficult. The
21 answer obviously would be that there would be
22 conditions, but identifying them and their impact
23 on real estate value is extremely difficult
24 really.

25 MR. REHON: And you indicated that you

1 looked at potential detrimental conditions and
2 their potential, obviously because the project
3 hasn't been built yet.

4 What potential detrimental conditions
5 did you identify?

6 MR. GIMMY: Well, the ones I just
7 discussed. We talked about electromagnetic fields
8 and the perception and the fears involved in those
9 aspects.

10 The factor of noise; the factor of
11 visual impact; emissions; and the unknown factors
12 relative to an impact on a project due to
13 terrorism.

14 MR. REHON: What did you look at in
15 connection with your analysis of the noise impact
16 on the value of the property?

17 MR. GIMMY: Well, depends on the time of
18 day you're looking at a noise factor. For
19 example, if during the day where there's an
20 ambient amount of noise you might not notice it so
21 much as compared to a condition at night.

22 How this would affect a distribution
23 center it's really difficult to say, but it's a
24 combination of all these factors that you have to
25 consider this property is not like typical

1 properties where it's closed down at night. Most
2 of the activity there takes place at night.

3 MR. REHON: And so what was your
4 conclusion after you conducted this analysis?

5 MR. GIMMY: In conclusion, my conclusion
6 was that the market value of this property was
7 \$8.8 million in the before condition. Under the
8 best case scenario it was \$1,500,000 less. And
9 under the worst case scenario it would have a
10 diminution in value of about half of that, or
11 about \$4.4 million.

12 MR. REHON: And what was the basis of
13 the best case and the worst case conclusions?

14 MR. GIMMY: Basically it's an impact on
15 rents, occupancy and costs. Under the best case
16 scenario you're going to have a less desirable
17 property. I factored in a very minor amount of
18 rental reduction and a slightly higher
19 capitalization rate.

20 And basically when you have more
21 turnover on a property you're going to have more
22 expenses because you're going to be paying more
23 commissions and having more tenant improvements to
24 make.

25 MR. REHON: And then what was the basis

1 for your worst case analysis?

2 MR. GIMMY: Basically as my experience
3 and my reading of the market as to what's
4 happening to properties, for example, where you're
5 going to have a vast increase in insurance, for
6 example. That would have to be factored into a
7 cost. A much higher reduction in the occupancy
8 of a property, and substantially lower rental
9 rates, as well as higher occupancy expenses.

10 MR. REHON: Does that conclude your
11 testimony?

12 MR. GIMMY: Yes, it does.

13 MR. REHON: The witness is available for
14 further examination.

15 PRESIDING MEMBER KEESE: How old are the
16 buildings that are on this property?

17 MR. GIMMY: Pardon?

18 PRESIDING MEMBER KEESE: How long ago
19 were the buildings on this property constructed?
20 What's the age of them?

21 MR. GIMMY: Oh, I've got it here. Over
22 ten years.

23 PRESIDING MEMBER KEESE: I guess if you
24 look at the project site you're located on the
25 quiet side of the project, would that be fair?

1 MR. GIMMY: The downwind shadows.

2 PRESIDING MEMBER KEESE: You're on
3 the --

4 MR. GIMMY: Or the upwind shadows.

5 PRESIDING MEMBER KEESE: You're on the
6 side where the administrative offices are and the
7 parking?

8 MR. GIMMY: On the west side, I would
9 call it. Prevailing winds, depending upon time of
10 the year, come from the northwest to the
11 southeast. During storms they come from the south
12 and the southwest to the north and the northeast.

13 PRESIDING MEMBER KEESE: And the
14 transmission from this project, do you know which
15 direction it goes from the -- if we're looking at
16 the two pieces of property, your property is -- it
17 looks to me like the transmission heads out over
18 Whitsell --

19 MR. GIMMY: Whitsell.

20 PRESIDING MEMBER KEESE: -- Whitsell,
21 that the transmission leaves the project going
22 that direction?

23 MR. GIMMY: Yes.

24 PRESIDING MEMBER KEESE: So it would be
25 quite a distance from your piece of property, and

1 you still felt there was a transmission line EMF?

2 MR. GIMMY: Well, no, I'm talking about
3 the general electromagnetic field that would be
4 associated with the substation. I'm not aware
5 that it's been measured as far as impact on this
6 property is concerned.

7 But the thing is you have the --

8 PRESIDING MEMBER KEESE: Okay, and in
9 rough numbers, help me again, you said the current
10 value is? Or preproject value of this property
11 might be?

12 MR. GIMMY: 8.8 million.

13 PRESIDING MEMBER KEESE: And it would go
14 down perhaps 1.9 in the best --

15 MR. GIMMY: 1.5.

16 PRESIDING MEMBER KEESE: 1.5. Somewhere
17 15 to 20 percent. And then maximum 50 percent?

18 MR. GIMMY: Yes.

19 PRESIDING MEMBER KEESE: That's the only
20 questions I have.

21 HEARING OFFICER FAY: And what is the
22 nature of the tenant that's there now?

23 MR. GIMMY: They are basically it's a
24 combination of warehousing, break bulk, and there
25 are some people doing processing and small

1 business type activities. There's ten tenants
2 there out of 142,000 square feet, so average size
3 would be about 14,000 feet. It's fully occupied.

4 HEARING OFFICER FAY: And you mentioned
5 a Yuba City power plant. Did you do an evaluation
6 of the impacts of that plant on local property
7 values?

8 MR. GIMMY: No.

9 HEARING OFFICER FAY: So what was the
10 relevance of mentioning it?

11 MR. GIMMY: Talking to planners, just
12 trying to get information that is really not
13 available in many publications about the measured
14 impacts or perceptions of the market impacts of
15 these facilities.

16 HEARING OFFICER FAY: And what did the
17 people -- first of all, what was the plant in Yuba
18 City? Was it the Sutter Energy Center?

19 MR. GIMMY: Yes.

20 HEARING OFFICER FAY: And what did you
21 learn talking to planners out there?

22 MR. GIMMY: I have a summary here
23 somewhere. I'm looking for my particular --

24 (Pause.)

25 MR. GIMMY: These are our written

1 comments from the investigation. One, planning
2 officials were generally favorable to the plants,
3 but Sutter County admitted that there were noise
4 complaints from nearby residences.

5 Two, Pittsburg plants were generally
6 placed amidst industrial uses, some of which might
7 be deemed dirty industry.

8 Three, one school administrator
9 indicates that the Calpine plant on 3rd Avenue
10 could be clearly heard at night at her home three
11 or four miles away.

12 One, observations were that both
13 Pittsburg sites, there were nearby power
14 generating facilities, cogeneration plants of
15 similar general appearance which seemed somewhat
16 louder.

17 As far as the tenants of the -- that was
18 the summary of the comments. Just a small
19 summary.

20 HEARING OFFICER FAY: Okay. And what do
21 you believe is the physical result of your worst
22 case analysis? I mean obviously there's a
23 financial result to the owner of this property.
24 What would the physical result be in the
25 environment? What's the environmental impact?

1 MR. GIMMY: Well, I'm really looking at
2 the market value impact, rather than the
3 environmental impact. Most of these impacts that
4 are measured in the market are based on the
5 perceptions of investors, as well as tenants in
6 properties. And the disclosure that has to be
7 made to buyers of properties of this type, as well
8 as to tenants occupying the space.

9 And I have made a list of potential
10 legal disclosure items that would have to be made
11 that aren't made now. As well as a list of
12 inhibitors to value, not requiring disclosure.

13 I'll be glad to read those to you if you
14 want me to.

15 HEARING OFFICER FAY: Well, I guess this
16 is a question I have to ask counsel. What is it
17 you believe the Energy Commission should do with
18 this information?

19 MR. REHON: Well, we think that if the
20 Commission is, in fact, going to approve the
21 project, it should approve it with conditions.
22 And the principal condition that affects us
23 obviously is to mitigate this economic impact.

24 Very simply, I think the Commission's
25 charge, if I understand it correctly, is to take a

1 look at all aspects of the project, and consider
2 whether it's to be approved. And if it is to be
3 approved, under what conditions.

4 And clearly the impact on the
5 immediately adjacent large piece of property owned
6 by my client, who's an investor who purchased the
7 property some time ago, there is an immediate and
8 significant impact. And we think it would be
9 appropriate for the Committee, for the Commission
10 to issue, again if it's to be approved, approve it
11 with a condition. And the condition is to
12 mitigate the potential negative impact on my
13 client.

14 HEARING OFFICER FAY: And what is the
15 mitigation?

16 MR. REHON: Well, that would be
17 something that you can either leave to the
18 applicant and the intervenor to resolve. Or you
19 can impose a specific condition relating to the
20 monetary impact.

21 I mean certainly it would be our
22 preference to sit and discuss this with the
23 applicant and try to resolve this. There were
24 initial discussions to try to resolve these
25 issues, which didn't prove successful.

1 But it would be one way or the other.
2 We'd like to see this impact resolved. Because
3 clearly we're not here just to make life difficult
4 for the applicant. My client has a long-standing
5 investment in this property and just wants to make
6 sure that that investment is protected. And right
7 now the place to have that investment protected is
8 with the Commission, it seems to me.

9 HEARING OFFICER FAY: Did your client
10 believe or secure any right to keep that property
11 vacant as it is now?

12 MR. REHON: Not that I'm aware of.

13 HEARING OFFICER FAY: So, your client
14 knew that this was industrially zoned property,
15 and --

16 MR. REHON: That's correct.

17 HEARING OFFICER FAY: -- that somebody
18 could build on it?

19 MR. REHON: And clearly, clearly any
20 other project that was -- any other way the
21 project would be developed my client would have
22 its recourses. But in this case, because this
23 matter is in front of the Commission, this would
24 be the appropriate place to raise this issue.

25 HEARING OFFICER FAY: All right, thank

1 you very much.

2 MR. GIMMY: You're welcome.

3 MR. WHEATLAND: Mr. Fay, we have some
4 questions.

5 HEARING OFFICER FAY: Yes.

6 MR. WHEATLAND: We have some questions,
7 if we could, please, sir.

8 HEARING OFFICER FAY: Well, we normally
9 don't ask questions regarding public comment, but
10 if you'd like to go ahead and ask some questions I
11 guess we could indulge that.

12 MR. REHON: And we certainly have no
13 objection to that.

14 MR. WHEATLAND: I apologize, I know we
15 want to get out of here, and we'll try our best to
16 do that. What I'm going to do is I'm just going
17 to ask a very few questions, and then with your
18 indulgence, Mr. Harris will ask a few questions.
19 We'll try to keep it very brief.

20 HEARING OFFICER FAY: Okay.

21 MR. WHEATLAND: Mr. Gimmy, when were you
22 retained by the intervenor?

23 MR. GIMMY: In January of 2002.

24 MR. WHEATLAND: And when did you
25 complete your assignment?

1 MR. GIMMY: Within the last two weeks.

2 MR. WHEATLAND: When exactly did you
3 complete your assignment?

4 MR. GIMMY: The day I signed the
5 declaration.

6 MR. WHEATLAND: Now the first question
7 your counsel asked you was whether you were
8 familiar with 3650 Enterprise Avenue in Hayward.
9 Have you actually seen this property?

10 MR. GIMMY: Yes.

11 MR. WHEATLAND: And when was the first
12 time that you actually saw the property?

13 MR. GIMMY: Earlier in the year.
14 Earlier in the year.

15 MR. WHEATLAND: When?

16 MR. GIMMY: Oh, sometime around February
17 or so.

18 MR. WHEATLAND: And have you made a
19 physical or visual inspection of the power plant
20 project site?

21 MR. GIMMY: Yes.

22 MR. WHEATLAND: And what do you observe
23 currently on that site?

24 MR. GIMMY: Two high antennas on the
25 property; otherwise, it appears to be vacant.

1 MR. WHEATLAND: And when you made your
2 assumption that the current market value or the
3 current value of 3650 Enterprise Avenue was \$8.8
4 million, did you take into account the presence of
5 those antennas?

6 MR. GIMMY: Yes.

7 MR. WHEATLAND: And if those antennas
8 were removed, how would that affect the value of
9 your client's property?

10 MR. GIMMY: I have not measured that,
11 but I doubt it would be significant.

12 MR. WHEATLAND: And why is that, sir?

13 MR. GIMMY: I think the general
14 perception of antennas is that they don't produce
15 a measurable hazard, you know, to the general
16 public.

17 For example, there's one in -- trying to
18 think where it is -- there's one in Ukiah that's
19 right in the downtown area. To me, as an
20 appraiser, I'd feel it's a hazard, --

21 MR. WHEATLAND: Let me ask you --

22 MR. GIMMY: -- but it doesn't seem to
23 affect the property around there.

24 MR. WHEATLAND: You mentioned EMFs, for
25 example, to your knowledge are the EMFs from these

1 antennas greater or lesser than the EMFs that
2 would arise from the proposed power plants?

3 MR. GIMMY: I haven't measured that.

4 MR. WHEATLAND: You also mentioned the
5 concern of noise. To your knowledge, will the
6 noise from the proposed power plant be audible on
7 the property of 3650 Enterprise Avenue?

8 MR. GIMMY: According to my information
9 it will be in the range of 60 to 65 decibels.

10 MR. WHEATLAND: And what is the current
11 background?

12 MR. GIMMY: At that location?

13 MR. WHEATLAND: At that location, sir?

14 MR. GIMMY: Oh, much lower.

15 MR. WHEATLAND: What is it?

16 MR. GIMMY: Off the top of my head I
17 can't tell you. But to me it's nothing more than
18 you would normally expect to hear in a warehousing
19 district.

20 MR. WHEATLAND: Did you notice the
21 presence of --

22 MR. GIMMY: Let me finish that. In a
23 warehousing district you normally don't have
24 processing and manufacturing plants, so that the
25 ambient noise mostly is truck traffic.

1 MR. WHEATLAND: Now, you also mentioned
2 that -- I'm trying to go quickly here -- you
3 mentioned also the presence of power lines. And I
4 think you've testified that you previously
5 appraised the impacts of power lines, is that
6 correct?

7 MR. GIMMY: Yes.

8 MR. WHEATLAND: All right. Where are
9 the power lines of the proposed project in
10 relation to 3650 Enterprise Avenue?

11 MR. GIMMY: They're at the opposite end
12 of the property.

13 MR. WHEATLAND: Thank you. I think Mr.
14 Harris has a few questions.

15 MR. HARRIS: And I'll keep it brief. I
16 appreciate the indulgence.

17 You mentioned that you'd done before and
18 after analyses, I think is the term of art that
19 you used, is that correct?

20 MR. GIMMY: Yes.

21 MR. HARRIS: Let's focus on those terms.
22 What's before? When did you start looking, in
23 terms of value, when did you consider to be
24 before?

25 MR. GIMMY: The before value is the

1 basic operation of the business that we focused on
2 in the last year or so as far as the rental
3 occupancy of the property, the --

4 MR. HARRIS: I'm sorry, did you say the
5 last year?

6 MR. GIMMY: Yes.

7 MR. HARRIS: So you looked back
8 basically one year in time, is that correct?

9 MR. GIMMY: Well, we looked at over a
10 period of years from the date of acquisition of
11 the property, but focused on the current rents
12 being paid by tenants for competitive properties,
13 too.

14 MR. HARRIS: So precisely what date, in
15 your mind, demarcates the before period?

16 MR. GIMMY: It's a hypothetical. In a
17 taking case it would be the date that --

18 MR. HARRIS: Actually, it's not a
19 hypothetical. It's directly to the testimony you
20 provided about a before and after analysis.

21 MR. GIMMY: Well, no, but a before and
22 after is a hypothetical condition because it
23 hasn't taken place yet.

24 But I testified earlier that in a
25 situation like this where you're testifying before

1 a proposed project, the date of the -- in a normal
2 condition where it's a condemnation action, or an
3 inverse action, it's the date that the
4 compensation is put down or filed or deposited.

5 MR. HARRIS: I understand the concept.

6 MR. GIMMY: Or the complaint is filed.

7 MR. HARRIS: Let me ask you, though,
8 what's the trigger for determining when the before
9 period is?

10 MR. GIMMY: Would be the complaint.

11 MR. HARRIS: In this specific case? You
12 performed a before and after analysis. What was
13 the specific trigger for the before period?

14 MR. GIMMY: Well, the before would be
15 now. We don't know if it's going to be built. If
16 it's not built, these things won't happen.

17 MR. HARRIS: So, your --

18 MR. REHON: I'm sorry, counsel, you're
19 asking him the as-of date? In other words, what
20 date is the date upon which he made his appraisal?

21 MR. HARRIS: He has testified that he
22 did a before and after analysis. I'm trying to
23 determine what the before period is. Before what?
24 Maybe that's the simplest way to put the question,
25 before what?

1 MR. GIMMY: It's the property as-is with
2 no project in place. No project.

3 MR. HARRIS: Okay, so your before
4 analysis has absolutely no relation to say the
5 date that the application for certification was
6 filed on this project, is that correct?

7 MR. GIMMY: Right.

8 MR. HARRIS: And your before date has
9 absolutely no relation to when the public was
10 first informed of the project, which predates the
11 certification date, is that correct?

12 MR. GIMMY: Yes.

13 MR. HARRIS: What about after? How do
14 you determine the after condition for a project
15 that doesn't exist?

16 MR. GIMMY: The measure in statutes is
17 to look at the impact of the project on a
18 hypothetical basis as of like one minute after the
19 before condition. Or one day after.

20 MR. HARRIS: Okay, so you haven't
21 located a before date, but it's one day after
22 that, is that --

23 MR. GIMMY: Well, it would be when you
24 were definitely made aware that this project was
25 in existence.

1 MR. HARRIS: Okay. You stated you
2 haven't done any performance of any appraisals of
3 power plant properties, is that correct, in your
4 response to Mr. Fay?

5 MR. GIMMY: Yes.

6 MR. HARRIS: Did your analysis take into
7 consideration the --

8 MR. GIMMY: Well, I would like to alter
9 that last statement. As far as power facilities
10 are concerned, last year I appraised one of the --
11 the impact of one of the Calpine facilities at the
12 Geysers on my client's property.

13 MR. HARRIS: Was that an analysis for a
14 taking action, or what?

15 MR. GIMMY: It was an analysis for the
16 sale of the property.

17 MR. HARRIS: Okay, appraisal for sale,
18 which you do no matter why you're selling a
19 property, correct?

20 MR. GIMMY: Yes.

21 MR. HARRIS: In terms of your analysis,
22 did your analysis take into consideration I guess
23 it was the 2001 study by Hulberg and Associates,
24 in which they looked at four natural gas fired
25 power plants throughout the United States. One in

1 Stonybrook, New York; one in Beth Page, New York,
2 which we all know from the U.S. Open, now. One in
3 Pittsville, Massachusetts, and in Crockett,
4 California.

5 Did your analysis take into
6 consideration that Hulberg study?

7 MR. GIMMY: Mr. Hulberg and I rarely
8 agree.

9 MR. HARRIS: Excuse me?

10 MR. GIMMY: Mr. Hulberg and I rarely
11 agree.

12 MR. HARRIS: That wasn't my question.
13 This is a fairly narrow question. Did your
14 analysis take into consideration the Hulberg
15 study?

16 MR. GIMMY: No, it did not.

17 MR. HARRIS: Thank you. In terms of the
18 phrase, and this is the last line of them, about
19 to close out, Mr. Fay.

20 You talk about detrimental conditions, I
21 think. You mentioned things like noise as being a
22 detrimental condition. And you've made an
23 assumption about potential diminution in value
24 here based upon a power plant use. That's a
25 pretty fair summary of what you've testified to

1 today?

2 MR. GIMMY: Yes.

3 MR. HARRIS: I would like you to answer
4 a hypothetical for me. What if, instead of a
5 power plant at this site, the use was a rail yard.
6 And I don't expect you to give me precise numbers,
7 because you haven't done that analysis obviously,
8 but would the effect on value for a rail yard at
9 this site, as opposed to a power plant, be among
10 the same order of magnitude in your mind?

11 MR. GIMMY: No, it would not.

12 MR. HARRIS: Would it be greater or
13 less?

14 MR. GIMMY: Far less.

15 MR. HARRIS: Far less. And can you
16 briefly explain why?

17 MR. GIMMY: One of my expertises is
18 appraising railroad rights-of-way. I'm currently
19 under contract with VTA, which is Valley
20 Transportation Authority.

21 MR. HARRIS: Right. And I've asked you
22 to assume a rail yard, not a right-of-way.

23 MR. GIMMY: Well, but part of these --

24 MR. HARRIS: -- a rail yards.

25 MR. GIMMY: No, part of my work, if

1 you'd let me finish here, --

2 MR. HARRIS: Sure.

3 MR. GIMMY: -- I just finished
4 appraising the Lenzen Yard, that's L-e-n-z-e-n, in
5 San Jose, which is a railroad yard.

6 There's no impact, believe me. They are
7 desirable locations for many types of businesses,
8 especially distribution businesses.

9 MR. HARRIS: How about a sand-blasting
10 operation? Next door, assume instead of a rail
11 yard, a sand-blasting operation.

12 MR. GIMMY: Well, whether it's legal or
13 not, I couldn't say. But obviously if something
14 was very loud and noisy, and sand was flying over
15 your property, that would be a detrimental
16 condition.

17 MR. HARRIS: So that may have an affect
18 on value, as well? How about --

19 MR. GIMMY: If it was allowed, if it was
20 legal and allowed to continue.

21 MR. HARRIS: You need more facts to
22 reach a determination, I understand. But it has
23 the potential to affect value, is that correct?

24 MR. GIMMY: If it's legal and it's going
25 to continue and there are detrimental effects,

1 obviously it would have to be disclosed, and the
2 likelihood is there would be an impact.

3 MR. HARRIS: And one more, just to kind
4 of round this thing out. How about a recycling
5 collection area? I call it a junk yard, but --

6 MR. GIMMY: They aren't giving permits
7 for junk yards anymore. Recycling plants do not
8 really have a negative impact on value because
9 they're basically, in today's market, I've worked
10 on Richmond Sanitary Service Facilities in
11 Richmond; and also in Fairfield. They're on large
12 sites; they're well landscaped; and they don't
13 have the appearance of a junk yard because all the
14 facilities and work is done inside large metal
15 building.

16 MR. HARRIS: So lastly, would you agree
17 that there is a relationship between a property's
18 potential value and its zoning?

19 MR. GIMMY: Yes, of course.

20 MR. HARRIS: Okay.

21 HEARING OFFICER FAY: Mr. Ratliff,
22 any --

23 MR. HARRIS: I think that's it.

24 HEARING OFFICER FAY: I know you're
25 through, Mr. Harris. Mr. Ratliff, do you have any

1 questions?

2 MR. RATLIFF: No.

3 HEARING OFFICER FAY: All right.

4 MR. REHON: And I have no redirect.

5 HEARING OFFICER FAY: Thank you very
6 much for your comments.

7 PRESIDING MEMBER KEESE: Thank you.

8 MR. REHON: You're welcome. Thank you.

9 May I move his testimony into the record, please?

10 HEARING OFFICER FAY: We will -- well,
11 have you filed this with the docket office?

12 MR. REHON: Filed what?

13 HEARING OFFICER FAY: All the documents
14 that were sent in. I received copies. Were
15 they --

16 MR. REHON: They were filed.

17 HEARING OFFICER FAY: With the docket
18 office? You sent 12 copies to the docket office?

19 MR. REHON: I'm not certain. I wouldn't
20 say that we're necessarily going to rely on those,
21 since I didn't have my witness --

22 HEARING OFFICER FAY: Okay. If you'll
23 be sure that all your documents are filed in the
24 normal course of business with the docket office,
25 I'd appreciate that.

1 MR. WHEATLAND: Mr. Fay, what documents
2 are you referring to, please?

3 HEARING OFFICER FAY: Well, why don't
4 you go through it with us, Mr. Rehon? I have a
5 pile of documents received from you.

6 MR. WHEATLAND: Can I just -- I don't
7 have any documents, that's why we were -- we
8 requested copies that were referenced in their
9 statement regarding the Sutter Power Plant, and we
10 received copies of those on Monday. But that's
11 the only documents we received from them.

12 MR. REHON: Those are the only documents
13 we're talking about. And in fact, I hadn't
14 intended to rely on those. But I would be happy
15 to file them.

16 HEARING OFFICER FAY: Well, yeah,
17 just --

18 MR. WHEATLAND: Well, I don't --

19 HEARING OFFICER FAY: -- just be sure
20 that -- the copy I have of your materials -- well,
21 actually, I take that back. I do have a docketed
22 copy. Your document, your initial one was filed
23 on June 17th. And it appears to include a noise
24 compliance test for Sutter Energy Center.

25 So that has been filed with a proof of

1 service --

2 MR. WHEATLAND: But I think Mr. Rehon
3 may have served it, but I'm not sure he's
4 intending to rely upon it in his testimony.

5 HEARING OFFICER FAY: Well, it is in the
6 record.

7 MR. REHON: Yeah, I mean, Mr. Wheatland,
8 you're absolutely correct. I did file it, but we
9 don't intend to rely on it. But I'm happy to have
10 the Commission consider it.

11 And thank you.

12 HEARING OFFICER FAY: Thank you.

13 MR. REHON: Oh, I did move his
14 examination into the record, is that a problem?

15 HEARING OFFICER FAY: Well, yes, we have
16 it on the transcript.

17 MR. REHON: Okay, thank you.

18 HEARING OFFICER FAY: The court reporter
19 was signaling yes.

20 MR. REHON: Thank you so much. And
21 thank you for your indulgence in allowing him to
22 testify today.

23 HEARING OFFICER FAY: Please give the
24 court reporter your card.

25 Any other comments on socioeconomic

1 impacts of the project? Ms. George.

2 MS. GEORGE: In the past year California
3 has been looted by the power industry,
4 particularly the natural gas boys from outside the
5 state. There's been a lot of executives who have
6 benefitted for awhile from the manipulation of the
7 market and the stock price bubble.

8 At this point the unintended
9 consequences include many of the corporations,
10 Enron, Calpine, the State of California, all of
11 them near junk bond status.

12 Our economy has been ruined by the power
13 industry. I think it is insane for California to
14 build natural gas powered plants and put us at the
15 mercy of these people in the future.

16 Senator Dunn, who is the person who's in
17 charge of the investigation of what happened last
18 year spoke at a meeting of the Public Utilities
19 Commission recently. He stated that the plan for
20 mitigating and preventing these circumstances in
21 the future, in a bill by Dianne Feinstein, that
22 Alan Greenspan had told the Senate that they
23 cannot pass any bill that prevents this type of
24 manipulation in the future, because the banks in
25 this country are too deeply invested in these

1 power company derivatives and other stock
2 manipulations to be able to stop that for now. So
3 that the fact is that they have to allow the
4 gouging to continue for the next few years while
5 the banks extricate themselves from this
6 disaster. This is Senator Joe Dunn's
7 testimony.

8 And I think it's obvious to anybody that
9 we have --

10 PRESIDING MEMBER KEESE: Socioeconomic,
11 this leads to socioeconomic resources?

12 MS. GEORGE: You don't consider that
13 socioeconomic, bankrupting the State of California
14 and the companies, including --

15 HEARING OFFICER FAY: Well, specific to
16 this power plant, though. That's what our --

17 MS. GEORGE: -- Calpine, practically?

18 HEARING OFFICER FAY: -- our focus --

19 MS. GEORGE: Excuse me?

20 HEARING OFFICER FAY: Our focus has to
21 be specific to this power plant, not the
22 national --

23 MS. GEORGE: This power plant is powered
24 by natural gas. The natural gas power is not
25 assured for the future. There is a tremendous

1 amount of building of natural gas power plants,
2 natural gas heaters in homes, natural gas
3 transportation. I mean the use of natural gas has
4 exploded since the early '80s, thanks to Enron and
5 the Bush family support of it.

6 Around the world there's an enormous
7 increase in the demand for natural gas. I don't
8 see anybody factoring these problems in. And the
9 State of California, with a gun to its head,
10 signed up for \$40 billion, billion dollars, worth
11 of power that would come from power plants like
12 this one.

13 I think this is the wrong thing to do.
14 This is a major, major problem socioeconomically
15 for everyone in our community. That's my first
16 comment.

17 Now, I'd also like to comment on the
18 environmental justice issue, which was dismissed
19 easily by the gentleman at the early part of this
20 section.

21 I learned today that the Russell City
22 was actually a neighborhood once upon a time. It
23 was a low income, African-American neighborhood
24 that existed in that area.

25 I think to name this project after a

1 community which has been forced out of the area,
2 and then say, well, there isn't any environmental
3 justice impact because there aren't any, you know,
4 aren't that many poor people around here anymore.
5 Well, that's an interesting way to deal with
6 environmental justice.

7 I think that the impact on the
8 historical legacy of the community is, you know,
9 is very sad to have it named after this community
10 which no longer exists.

11 And I don't know how your financial
12 analysis is set up to determine environmental
13 justice, but I think that there is a problem here
14 of environmental justice, and the City of Hayward
15 in general, because it is considered not as well
16 off an area. You didn't propose to build this
17 project in Berkeley, I notice.

18 And I think that it was chosen because
19 it was a minority area. It was a low income,
20 working class area more. And I think there is an
21 environmental justice issue here that needs to be
22 addressed.

23 And that's my comment for now.

24 HEARING OFFICER FAY: Any other comments
25 on socioeconomic impacts of the project?

1 All right. I see no indication. We
2 will now move to the topic of soil and water
3 resources. Mr. Wheatland.

4 MR. WHEATLAND: On soil and water we
5 have three things that I'd like to direct your
6 attention to. First is the testimony of Craig
7 Rice in exhibit 2. Second is the testimony of
8 Kris Helm in exhibit 3, that's an addendum to our
9 testimony for soil and water.

10 In the final staff assessment the staff
11 proposed an additional condition regarding the
12 circumstances under which potable water can be
13 used as backup to the plant in the event of an
14 unavoidable interruption of supply from the
15 advanced wastewater treatment plant.

16 And we have proposed some additional
17 language that would clarify those circumstances
18 that are set forth in our addendum under soil and
19 water resources. And it's our understanding that
20 the staff concurs with that clarification.

21 And, finally, in our comments on soil
22 and water on page 24 of exhibit 3, we suggest some
23 clarifying language to describe the nature of the
24 influent that's processed through the advanced
25 wastewater treatment plant. This is merely to

1 provide an accurate description of the influent,
2 and is not in any way -- does not affect any
3 condition.

4 And with that I would move into
5 evidence, please, our testimony on soil and water
6 resources in exhibit 2 and 3.

7 HEARING OFFICER FAY: Before we rule on
8 that, can I call your attention to page 13 of
9 exhibit 3, the proposed language. And line 3
10 there, is it fair to assume that the 1080 should
11 be followed by the word "hours"?

12 MR. WHEATLAND: Yes, it is. Thank you
13 very much.

14 HEARING OFFICER FAY: And with that, is
15 there any objection to receiving this into
16 evidence? I hear none; so moved.

17 And now we will move to the staff.

18 MR. RATLIFF: Yes. Mr. Fay, our witness
19 on water resources is Joe Crea.

20 HEARING OFFICER FAY: Please swear the
21 witness.

22 Whereupon,

23 JOE CREA

24 was called as a witness herein, and after first
25 having been duly sworn, was examined and testified

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. RATLIFF:

4 Q Mr. Crea, did you prepare the staff
5 testimony on water resources?

6 A Yes, I served as the technical lead in
7 assisting our team members to put together this
8 staff assessment.

9 Q Was the other principal team member John
10 Kessler?

11 A Correct.

12 Q Is that testimony true and correct to
13 the best of your knowledge and belief?

14 A Yes, it is.

15 Q Can you summarize it briefly, please.

16 A Sure. Staff analyzed the proposed power
17 plant for construction and operation and any
18 impacts with regards to soils, water supply,
19 wastewater discharge, erosion and sedimentation,
20 as well as stormwater quality management.

21 And staff has found that there are no
22 significant impacts, provided that the conditions
23 of certification are followed.

24 Q Does that complete your summary?

25 A And just to elaborate on some of these

1 areas, before there were concerns raised with
2 regards to discharge from the power plant, the
3 wastewater discharge, thermal discharge. That
4 will not impact the Bay because the discharge is
5 going directly to the water pollution control
6 facility, which is owned and operated by the City
7 of Hayward.

8 Q Would you describe that as an advantage?

9 A Yes, it is an advantage, because the
10 reclaimed water supply that's going to be used for
11 the power plant is going to go through advanced
12 treatment, tertiary treatment. And the
13 constituents that will be discharged within the
14 wastewater will meet the NPDES, which is National
15 Pollution Discharge Elimination System, their
16 permitted limits.

17 So, basically the applicant will have to
18 go through review and approval with the City of
19 Hayward before they can discharge to their water
20 pollution control facility, because ultimately the
21 City of Hayward is responsible for that discharge
22 from their line into the Bay.

23 Q Do you have anything else to offer in
24 your testimony?

25 A And any other discharge from the site

1 with regards to stormwater and erosion and
2 sediment control will be handled through the NPDES
3 permit for stormwater discharge from construction
4 activities, as well as from industrial activities.

5 And as part of that permitting process
6 the applicant will be required to develop two
7 stormwater pollution prevention plans, otherwise
8 known as SWPPPs. One for during construction to
9 handle stormwater discharge; and the other for
10 industrial operation.

11 And the main components of the SWPPPs
12 are the identification and locations of best
13 management practices during construction and
14 operation of the power plant.

15 And on a further note the regional
16 boards, normally they do not have a review process
17 prior to construction and operation of these
18 plants, just because of staffing situations. So,
19 an advantage that the Energy Commission has is
20 that in our conditions and through compliance we
21 are reviewing these stormwater pollution
22 prevention plans prior to construction and
23 operation of the power plant to insure that there
24 will be no adverse impacts with regards to erosion
25 and sedimentation, as well as any other

1 constituents that may be included in the
2 stormwater discharge.

3 That's it.

4 MR. RATLIFF: Thank you.

5 HEARING OFFICER FAY: Do you want to
6 move his testimony?

7 MR. RATLIFF: Oh, yes, please.

8 HEARING OFFICER FAY: All right. Any
9 objection? We'll receive that into evidence at
10 this time.

11 PRESIDING MEMBER KEESE: A quick
12 question. Are we consistent between what we heard
13 from applicant and the staff?

14 MR. RATLIFF: Consistent with regard to
15 their proposed alteration of the condition
16 regarding --

17 PRESIDING MEMBER KEESE: Right. Are
18 you --

19 MR. RATLIFF: Yes, the concern that
20 staff had, which we think is met by the condition
21 as amended, is that reclaimed water used by the
22 facility, when it is available, at all times when
23 it is available, if there is a reason that the
24 facility is out of service, or some unforeseen and
25 unforeseeable reason, we -- our intent was not to

1 prevent them from relying on potable water.

2 HEARING OFFICER FAY: So you agree with
3 the revised language in exhibit 3?

4 MR. CREA: That's right.

5 HEARING OFFICER FAY: Okay. And how
6 about the applicant's recommendation to revise the
7 explanation of the influent -- description of the
8 influent?

9 MR. RATLIFF: I'd have to ask my
10 witness.

11 HEARING OFFICER FAY: Where was that,
12 Mr. Wheatland?

13 MR. WHEATLAND: In our comments in
14 exhibit 3. On, I believe, it's page --

15 MR. CREA: 24. What comment was that?

16 MR. WHEATLAND: That's comment number
17 three.

18 MR. CREA: Number three. I would ask
19 for some time to review this to come to a
20 conclusion.

21 (Parties speaking simultaneously.)

22 PRESIDING MEMBER KEESE: Since the
23 indication from applicant was that it had no
24 substantive impact anyway, --

25 MR. WHEATLAND: That's correct.

1 PRESIDING MEMBER KEESE: -- he's just
2 trying to clarify the language. Let's -- I think
3 you can work that out.

4 HEARING OFFICER FAY: Yeah. And I
5 would, if you could, very briefly, very briefly,
6 in layman's terms, just describe the general
7 relationship between the power plant's cooling
8 needs and the existing City wastewater treatment
9 plant.

10 In simple terms, how does that
11 relationship work?

12 MR. CREA: The power plant's cooling
13 needs could be found within section 4, at pages
14 4.13-5 through 4.13-7 in the staff assessment.

15 Basically for cooling purposes the power
16 plant will need, on an average, 3.3 million
17 gallons per day; and on a peak they'll need -- I'm
18 sorry -- average daily flow --

19 HEARING OFFICER FAY: Let me stop you
20 there. I don't need quantities. I just want
21 roughly what is the relationship. Right now
22 there's a sewage treatment plant, there's no power
23 plant --

24 MR. CREA: Right now there's a sewage
25 treatment --

1 HEARING OFFICER FAY: When it's
2 finished, what --

3 MR. CREA: Correct, there's a sewage
4 treatment plant --

5 HEARING OFFICER FAY: -- will --

6 MR. CREA: -- that is discharging their
7 wastewater, once it's treated, into what's known
8 as a EBDA line into the Bay.

9 What's going to happen is that the power
10 plant will tie into this treatment plant and use
11 that reclaimed water for the cooling purposes and
12 other water uses. And will further treat that to
13 a tertiary level with the addition of an advanced
14 water treatment facility. Which, in turn, is
15 going to be used for future needs for the City
16 here to treat for domestic potable water services
17 as one. And the other will be to continue to
18 supply the power plant.

19 And then this power plant, once it
20 processes the water, it's discharged back into the
21 water pollution control facility. And there have
22 been discussions and agreements between the
23 applicant and the City of Hayward, through the
24 intervention of staff, that there is enough water
25 to meet the needs for the power plant from this

1 water pollution control facility.

2 And that the water going back to this
3 facility, the applicant will need to consult with
4 or confer with the City of Hayward to obtain a
5 pretreatment permit from them as part of the
6 City's overall NPDES permit.

7 So, to sum everything up in a nutshell,
8 there is enough water to supply the power plant.
9 And the power plant will be taking that water and
10 further treating it through tertiary treatment,
11 through microfiltration and reverse osmosis; and
12 turning it back to the power plan -- I'm sorry,
13 and sending it back to the water pollution control
14 facility.

15 HEARING OFFICER FAY: So, as long as the
16 water pollution control facility is operating and
17 the HEWs or the AWT is operating, the power plant
18 will use no fresh water for cooling, is that
19 correct?

20 MR. CREA: Correct. Only for domestic
21 potable purposes, they'll need to use the potable
22 water, which is very minute.

23 HEARING OFFICER FAY: Okay, thank you.

24 MR. CREA: You're welcome.

25 HEARING OFFICER FAY: All right. That

1 concludes taking evidence on soil and water
2 resources.

3 Are there any comments from the public
4 regarding impacts to soils or to the water system?
5 I see no -- yes, Ms. George.

6 MS. GEORGE: The water from the
7 treatment plant could be used in other ways. And
8 it's not clear what happens if there is, for some
9 reason, a shortage of water coming through that
10 treatment plant. Would the applicant then have
11 access to fresh water? I don't know.

12 But in any case, there is a technology
13 that should be used, dry cooled power plants. We
14 have no need for water cooling. That's an old
15 technology, and the applicant should be required
16 to do dry cooling, as they are in Arizona now.

17 HEARING OFFICER FAY: Any other
18 comments? Okay.

19 Then we're going to move on to
20 transmission system engineering, our final topic.
21 Mr. Wheatland.

22 MR. WHEATLAND: Our testimony on
23 transmission system engineering is set forth in
24 exhibit 2 sponsored by Mr. Wood and Mr. Amirali.
25 I will note, as we have shown in our errata, that

1 the proper title is transmission system
2 engineering and we should drop the reference to
3 transmission line safety and nuisance.

4 We are in concurrence with the staff
5 regarding the conditions of certification in this
6 area. And I would move into evidence this portion
7 of exhibit 2.

8 HEARING OFFICER FAY: Any objection? So
9 moved.

10 MR. RATLIFF: Staff would like to
11 request that Mr. Wood and Mr. Amirali briefly
12 summarize their testimony, at least with regard to
13 any system benefits which the power plant will
14 offer. We think that that evidence would be
15 valuable to the record.

16 HEARING OFFICER FAY: Are they
17 available?

18 MR. WHEATLAND: Yes, they are.

19 HEARING OFFICER FAY: Let's have them
20 sworn in.

21 MR. WHEATLAND: They've been waiting
22 here all day, so -- they have a chance to speak.

23 HEARING OFFICER FAY: Please swear in
24 the panel.

25 //

1 //

2 Whereupon,

3 DANIEL WOOD and AMENELI AMIRALI
4 were called as witnesses herein, and after first
5 having been duly sworn, were examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WHEATLAND:

9 Q Gentlemen, I'm going to have to ask
10 these questions of each of you. I'm not going
11 to -- let me just do it very quickly.

12 Did you both participate in the
13 preparation of this testimony in exhibit 2?

14 MR. WOOD: We did.

15 MR. AMIRALI: Yes, we did.

16 MR. WHEATLAND: And is the testimony
17 true and correct to the best of your knowledge?

18 MR. WOOD: Yes, it is.

19 MR. AMIRALI: Yes, it is.

20 MR. WHEATLAND: And do you have any
21 changes in the testimony at this time?

22 MR. WOOD: There are two minor changes.

23 MR. WHEATLAND: Go ahead, please make
24 those.

25 MR. WOOD: I'll let him go through the

1 first one.

2 MR. AMIRALI: Yeah, the first one is the
3 spelling of my name.

4 (Laughter.)

5 MR. AMIRALI: My first name is
6 A-m-e-n-e-l-i.

7 MR. WHEATLAND: And the second change,
8 please?

9 MR. WOOD: The second change is on page
10 86, section 3A, introduction. We'd like to strike
11 the last phrase of that paragraph, starts with
12 "And have no impact on the rest of the system."

13 MR. WHEATLAND: Okay, thank you. Now,
14 with that change, would one or both of you please
15 summarize the benefits to reliability that will
16 result from the construction of this facility.

17 MR. WOOD: Well, like the staff, we did
18 not prepare a local system effects section in our
19 testimony. However, I think both of us can vouch
20 for the fact that this will add significant
21 benefits.

22 We agree with the staff's testimony that
23 it will provide voltage support to the area. It
24 will have a reduction in losses to the area. And
25 would you like to add?

1 MR. AMIRALI: Yeah, further adding that
2 from a transmission system and from a reliability
3 of a power system standpoint, this power plant
4 addresses two major needs. And those are the
5 two -- every transmission system has got needs
6 that can be broken down into adequacy, as well as
7 reliability. The power plant adds to both.

8 Secondly, the power plant is located in
9 the heart of the Bay Area; that's why it provides
10 voltage support as well as reduction in losses.

11 And finally, the Bay Area is considered
12 a transmission system deficient area from the ISO
13 standpoint, and we have ISO who can testify on
14 that. And the units, several power plants in the
15 Bay Area or several units are considered
16 reliability/must run. That means they have to
17 operate in order to maintain the reliability of
18 the local area transmission system.

19 So, the Russell City Power Plant
20 provides benefit both from a system standpoint, as
21 well as the local area standpoint.

22 MR. WHEATLAND: Okay, thank you. The
23 panel's available for questions or cross-
24 examination.

25 HEARING OFFICER FAY: Mr. Ratliff?

1 MR. RATLIFF: No, thank you.

2 HEARING OFFICER FAY: Just so the
3 audience understands, am I correct that it does
4 not work to simply build all the power plants out
5 in the desert and run long transmission lines to
6 the Bay Area? And why not?

7 MR. WOOD: The main reason it doesn't
8 work is because you have to provide a lot of
9 facilities to support voltage in the area, because
10 when you transmit power over long lines you have a
11 tendency to drop the voltage at the receiving end
12 or the load end.

13 So, you have to provide other facilities
14 that support the voltage in addition to the power
15 plant.

16 Not to mention the losses that you incur
17 on those lines, those long lines from the desert,
18 as you put it, into the Bay Area or to a major
19 load center.

20 MR. AMIRALI: Further adding, sir,
21 serving load in any kind of load -- serving
22 electric demand in any kind of load pocket, as Dan
23 pointed out, requires that you build transmission
24 lines.

25 The Bay Area, by itself, is transmission

1 corridor limited. That means only certain amount
2 of power can flow in through the corridors.

3 In the old vertically integrated
4 environment the power plants were built closest to
5 the load center because that's where they provide
6 the most benefits. From a transmission system
7 standpoint, purely from a physical standpoint of
8 transmitting AC power over a long transmission
9 line, there is not just the resistive losses.
10 There's also reactive losses.

11 And even though you can transfer real
12 power, megawatts, over long distances, reactive
13 power provides -- the most benefit of the reactive
14 power comes from facilities located inside the
15 load pocket closest to the load center.

16 As an engineer we generally say that
17 wires don't travel as far as they used to. So,
18 that's why you need local area support.

19 And throughout California, and
20 throughout the United States, or throughout any
21 kind of power system, the local support is
22 provided by wires or reactive power sources
23 located within the load pocket.

24 And you need a combination of both
25 static sources as well as dynamic sources. And

1 dynamic sources are the sources like power plants
2 or something with a spinning mass that can carry
3 the system through a disturbance. So it provides
4 benefit from that respect, as well.

5 HEARING OFFICER FAY: Thank you.

6 MR. WOOD: I might add that there is
7 about, if my memory serves me correctly from the
8 Metcalf hearings, about 3700 megawatts that has an
9 average age of 37 years in the Bay Area.

10 Those megawatts are, some of them are
11 past retirement, and others are very near
12 retirement. And it was the outages of those
13 megawatts that attributed greatly to the blackouts
14 that we had during the crisis.

15 HEARING OFFICER FAY: So, there's a
16 reliability aspect, as well, to having a power
17 plant close to the load center?

18 MR. AMIRALI: Absolutely.

19 HEARING OFFICER FAY: Thank you very
20 much. Appreciate your patience, and you're
21 excused.

22 Mr. Ratliff, staff witness?

23 MR. RATLIFF: Staff has two witnesses;
24 one is Ajoy Cuha; he is Commission Staff witness.
25 With him is Johan Galleberg, who is here

1 representing the California Independent System
2 Operator, who is also here today to answer
3 questions. And to be sworn, okay.
4 Whereupon,

5 AJOY CUHA and JOHAN GALLEBERG
6 were called as witnesses herein, and after first
7 having been duly sworn, were examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. RATLIFF:

11 Q Mr. Cuha, did you prepare the testimony,
12 with Mr. McCuen, in transmission system
13 engineering that's part of exhibit 1?

14 MR. CUHA: Yes, I did.

15 MR. RATLIFF: And is that testimony true
16 and correct to the best of your knowledge and
17 belief?

18 MR. CUHA: Yes.

19 MR. RATLIFF: Do you have any changes to
20 make in it today?

21 MR. CUHA: No.

22 MR. RATLIFF: Can you summarize it for
23 us, please?

24 MR. CUHA: Staff has reviewed the
25 application for certification filings; and staff

1 has reviewed the PG&E system impact study; and
2 Cal-ISO testimony later in March 2002.

3 And by reviewing all the filings and
4 study reports staff finds that this 600 megawatt
5 generating plant will have a switchyard made out
6 of five breaker system being buss. And from the
7 switchyard it will go with a double circuit line
8 to the East Shore Substation. And the power will
9 be intake to the PG&E system at the East Shore
10 Substation 230 kV buss.

11 At the moment the buss is only a
12 singular buss system. And the modification
13 required for interconnecting the project will be
14 converting the East Shore Substation single buss
15 system into a double buss one-and-a-half breaker
16 system. And the new substation buss will
17 interconnect with the project double circuit line.
18 And the existing Pittsburg line will loop in and
19 out of the East Shore line, so ultimately from the
20 East Shore Substation there will be two 230 kV
21 lines to the San Mateo Substation, and two 230 kV
22 line to Pittsburg Substation, and two 230 kV line
23 to the project switchyard.

24 And by analyzing the project we find
25 that the facilities, interconnecting facilities

1 and switchyard, they will comply with all the
2 laws, ordinances, regulations and industry
3 standards.

4 And the reliability study by the PG&E
5 and Cal-ISO has done for this study shows the
6 project might have some, project will have some
7 adverse impact in the system. The impacts are
8 that the San Mateo 230 -- kV substation -- banks
9 will be overloaded under normal and emergency
10 conditions. Emergency conditions, under a single
11 contingency. And these show to San Mateo
12 Substation the double circuit line. If one line
13 goes out, then the other line will be overloaded.
14 And so also under N-minus-2 and in certain
15 generating condition of N-minus-zero. Those two
16 lines may also be nominally overloaded.

17 So the mitigation plan, as developed by
18 PG&E and Cal-ISO, says that the impacts of the
19 East Shore Substation will be replaced through the
20 higher capacity, and mitigation plan for San Mateo
21 to East Shore Substation double circuit line.

22 There are three options. One is for
23 special protection scheme. Another is for
24 operation procedure. And third is for the
25 reconductoring on the lines. Cal-ISO has reviewed

1 and they have concluded that for technical reasons
2 and the amount of overloading on the condition,
3 special protection scheme is not applicable in
4 this case for single contingency. But after
5 double contingency, it will have to be there for
6 special protection scheme.

7 Like for the operation procedure and
8 reconductoring the two option. Staff doesn't
9 believe that operation procedure will not actually
10 allow full output generation of the plant, because
11 there will be pre contingency -- therefore, staff
12 believes that even the reconductoring is only
13 viable option. And Cal-ISO also think that way.

14 And that's why we have done some -- and
15 that's why you see the reconductoring of the lines
16 is a foreseeable project. And we have therefore
17 evaluated for -- purpose, the environmental impact
18 in the general, and the environmental impact of
19 the line.

20 And according to the condition of
21 certification, staff feels that the project is
22 ready for certification.

23 MR. RATLIFF: Thank you, Mr. Cuho.

24 Mr. Galleberg, you heard Mr. Cuho's
25 testimony. But before we discuss any substantive

1 issues, could you, for the benefit of the
2 audience, can you explain what the Independent
3 System Operator's role is and what it does with
4 regard to new power plant projects?

5 MR. GALLEBERG: When it comes to the
6 interconnection of new power plants we're
7 responsible for reviewing interconnection studies
8 performed by the utilities; in this case, PG&E.

9 And we review those studies making sure
10 the assumptions and the results are okay. Then we
11 grant approval based on those results of the
12 studies.

13 That's based on full mitigation in
14 included in the studies.

15 MR. RATLIFF: So has the ISO reviewed
16 this project?

17 MR. GALLEBERG: Yes, we have given it --
18 our approval based on the system impact studies
19 performed by PG&E.

20 MR. RATLIFF: Has the ISO yet made a
21 final determination about whether or not the San
22 Mateo and Shoreline will need to be upgraded?

23 MR. GALLEBERG: No. We are awaiting the
24 facility studies from PG&E before we get to any
25 final determination.

1 MR. RATLIFF: Okay. I have no further
2 questions for these witnesses, but the Committee
3 certainly may.

4 HEARING OFFICER FAY: Are you moving
5 that testimony at this time?

6 MR. RATLIFF: Yes.

7 HEARING OFFICER FAY: Appendix A, as
8 well?

9 MR. RATLIFF: We'd like to move actually
10 Mr. Cuha and Mr. McCuen's testimony, but we would
11 also like to make sure that we move in appendix A,
12 which is the supplemental environmental analysis
13 for the potential reconductoring of the Hayward
14 Bayshore line, which is also part of the FSA.

15 HEARING OFFICER FAY: Okay. Any
16 objection?

17 MR. WHEATLAND: No.

18 HEARING OFFICER FAY: So we'll receive
19 that at this time.

20 Mr. Wheatland, any questions?

21 MR. WHEATLAND: We have no questions.
22 And I would like to just state for the record that
23 the applicant concurs with the testimony of the
24 ISO.

25 HEARING OFFICER FAY: Okay. And I'd

1 just like to ask either of you gentlemen, you are
2 satisfied that in the event that the
3 reconductoring for San Mateo must be done, that
4 the potential environmental impacts of that
5 reconductoring have been examined in appendix A,
6 and there will be no significant impacts, is that
7 correct?

8 MR. RATLIFF: Are you addressing that to
9 these witnesses?

10 HEARING OFFICER FAY: Well, did --

11 MR. RATLIFF: I think if I'm going to
12 have to sponsor it, I suppose I did this wrong. I
13 should have it sponsored by Mr. Caswell, who was
14 much more familiar with that analysis than were
15 these two witnesses.

16 HEARING OFFICER FAY: So that was an
17 integrated analysis?

18 MR. RATLIFF: Well, yes. And the role
19 of the transmission engineers, of course, is not
20 to do the environmental analysis, but to determine
21 whether or not the upgrade is reasonably
22 foreseeable. And that was the role they played.

23 And then the environmental staff,
24 itself, did the analysis for the potential issues
25 regarding the upgrade, on which Mr. Caswell can

1 speak.

2 HEARING OFFICER FAY: Okay. Can you
3 address the question, Mr. Caswell?

4 MR. CASWELL: Yes. We said that it
5 would be necessary to do an analysis of the
6 potential reconductoring. And in that analysis,
7 it was because it was a reasonable foreseeable
8 project as a result of this project.

9 What we did is we addressed many of the
10 environmental issues related to reconductoring and
11 interviews with PG&E without having a complete
12 facilities or scope of work from PG&E that would
13 require all the aspects of that reconductoring.
14 They do not have a design because they have not
15 gone that far.

16 Under the reconductoring we would not be
17 required to license it. It would be the CPUC. And
18 since the CPUC would be the responsible agency for
19 the licensing of the reconductoring, they would do
20 a complete environmental analysis.

21 What we did is an alternatives level
22 analysis. And the staff found that there were no
23 impacts related to the reconductoring that could
24 not be mitigated by the applicant or the CPUC.

25 HEARING OFFICER FAY: And just briefly,

1 in layman's terms, this is just adding new lines
2 hung from the existing power poles across,
3 parallel to the San Mateo Bridge?

4 MR. CASWELL: As described by PG&E, they
5 believe that they could hold new conductors.
6 There may be some reinforcement of the support
7 arms at that time, but they would not be -- they
8 would be able to pole rather lengthy poles across
9 the Bay Area on that existing transmission system.

10 HEARING OFFICER FAY: Thank you. All
11 right. That concludes the taking of evidence on
12 transmission systems engineering. Are there any
13 comments regarding that? Public comment on that
14 topic?

15 MS. GEORGE: I have a brief comment and
16 I also wanted to find out if we're going to have a
17 chance to make a general comment? If not, I'll
18 make it now.

19 HEARING OFFICER FAY: Might as well make
20 it now.

21 MS. GEORGE: All right. Transmission
22 systems are eyesores; there's dangers from EMF.
23 And we just simply don't need any more
24 transmission systems. And I am well aware that
25 around the state people don't want more

1 transmission than there already is. What they
2 want is to have those lines put underground, taken
3 out. They don't want them there. For all sorts
4 of reasons.

5 There's no need to build a kind of a
6 system that would require more transmission. We
7 have the opportunity to build distributed
8 generation. The City of San Francisco is working
9 on that. Other cities around the state are
10 working on it. And Hayward can certainly work on
11 it, too.

12 That would be a much more stable system
13 for a pocket like the Bay Area. We would not have
14 to worry about getting power from long distances
15 away because the power would be right here.

16 In my general comment I would like to
17 say that Women's Energy Matters believes that this
18 whole process should be stopped right here and not
19 moved forward.

20 We believe that this is a violation of
21 the integrated resources planning laws that are on
22 the books in California. We believe that the CEC
23 is rushing ahead to approve yesterday's
24 technology, that it has been stampeded by Enron
25 and other gas marketeers into a construction boom

1 which will make it impossible for California to
2 move forward with renewable energy and energy
3 efficiency as the solution for our future energy
4 needs.

5 All we need for that is a little more
6 time. And there is no reason to build these new
7 power plants. We have a glut of energy right now.
8 We have a natural gas shortage that is looming up
9 in as soon as 2003. This is a total mistake.

10 Last year Governor Davis declared a
11 state of emergency. There was no state of
12 emergency, except for the manipulation of the
13 power plants. There was no shortage of energy
14 last year.

15 The Energy Commission -- everybody fell
16 for this. This power plant construction boom. It
17 was all a mirage. It was not necessary. It was a
18 manipulation of the public perception. And it was
19 launched by a company which is being -- is in
20 bankruptcy, called Enron; which has been running
21 the -- it still is -- running the Bush
22 Administration.

23 In California Governor Davis did not
24 hold meetings with environmentalists and energy
25 efficiency proponents like myself. He held

1 meetings only with the power industry, only with
2 generators and utilities and bankers.

3 They discussed all of these matters in
4 secret, in violation of the Brown Act. And in
5 this particular case, the deliberate secrecy of
6 Calpine and the Energy Commission regarding this
7 particular Russell City Power Plant, everybody
8 wondered, well, where's Russell City? I don't
9 know anyplace in the Bay Area called Russell City.

10 So there were a lot of people who had no
11 idea there was a power plant being built here.
12 You know, in Pittsburg and Antioch they knew that
13 there was a power plant being built, because they
14 had the name on it. But this one was a
15 completely, you know, misnamed for the purpose of
16 misleading people.

17 It was put on a fast track, a six-months
18 process, because of Governor Davis' phony energy
19 emergency. I believe this is a total violation of
20 due process.

21 In addition, Women's Energy Matters was
22 prevented from intervening. We were -- made an
23 attempt to get involved in this process months
24 ago, when the staff either did not know or
25 pretended not to know that it was possible to be

1 an intervenor. That is another violation of due
2 process. We intend to appeal.

3 Women's Energy Matters also notes that
4 the panel here today, the staff, everyone who
5 appeared has been male; all the applicants are
6 male. We believe that this is sex discrimination
7 in this process.

8 And we ask the Commission to rethink the
9 great big hurry that we are experiencing around
10 this whole thing. It just doesn't make any sense.

11 I am not that young anymore. This power
12 plant will be operating for the rest of my life.

13 And the way this power plant
14 construction boom is hitting us, I believe the
15 purpose of the construction boom was to make the
16 entire country, and certainly the State of
17 California, dependent on natural gas for the rest
18 of our lifetimes, to prevent renewable energy and
19 energy efficiency from being considered as the way
20 to solve our energy problems in the future, which
21 would solve the problem of global warming, which I
22 am shocked to hear that the California Energy
23 Commission did not even consider in reviewing this
24 power plant.

25 I think it's pitiful that we're at this

1 state of affairs. We have the information now
2 that we lacked a year ago, at least the public
3 lacked a year ago, I think the insiders had it for
4 many many years, about what was being planned for
5 us. And how they were going to wring all of our
6 money out of California and take it and put it
7 into executives' pockets who were manipulating
8 their stock and fraudulently setting up offshore
9 entities to do this.

10 Anyway, I'm blithering, I'm tired. I
11 think that the whole way that the Energy
12 Commission hustles us along is preventing public
13 participation from being anything other than
14 perfunctory.

15 And I really think that it's time to
16 slow down, have some real public participation.
17 If given a chance, we will be able to get other
18 people involved in this process.

19 Women's Energy Matters is connected with
20 other groups and individuals all around the state
21 and the country, and the world, for that matter,
22 who work on these issues.

23 And if we had been able to get an
24 intervenor status we would have brought them
25 along. And we intend to bring them along in the

1 future, in this and in other power plant issues.

2 Thank you very much.

3 PRESIDING MEMBER KEESE: Thank you.

4 HEARING OFFICER FAY: Thank you. Any
5 other comments before we close? Yes, sir, you
6 wish to comment?

7 MR. REYNOLDS: Who did I give the card
8 to? Excuse me, who do I give the card to?

9 HEARING OFFICER FAY: That's all right.
10 Why don't you just state your name.

11 MR. REYNOLDS: Okay. My name is Al
12 Reynolds. I live in Eden Gardens Parkwest
13 Homeowners Association. It's a tract between
14 Depot Road, 92, Industrial and Esperion Boulevard.

15 I have a couple questions, if I may,
16 because I came late. Two things kind of struck
17 me. It seems to me when they were going to
18 deliver diesel fuel, where the tracks are now, at
19 the present time, it would be dropped to a line
20 and pumped over to the site, okay. If not, there
21 would be another track adjacent to the building.
22 I could be wrong about that part.

23 The other thing I would like to know
24 when I say you people, why does the individual
25 have to write to the PUC to give myself a little

1 less payment in my bill? I don't understand this.
2 I worked 30 years, god, I mean can't you give me a
3 break? Why do we have to do this? I understand
4 there's a purpose for this, but it just annoys me
5 to all end, I have to write a letter so I can get
6 a lower rate because I'm now a senior citizen.
7 Can anybody answer any of those questions for me?

8 PRESIDING MEMBER KEESE: We can't answer
9 the PUC issue, because that's a different entity
10 that sits in San Francisco.

11 MR. REYNOLDS: I understand that.

12 PRESIDING MEMBER KEESE: As far as
13 diesel, --

14 HEARING OFFICER FAY: It's not a diesel
15 fired plant. It's a --

16 PRESIDING MEMBER KEESE: This is not a
17 diesel fired plant. If there is any diesel coming
18 onto this property it would surprise me. And if
19 it is, it's very limited. So, --

20 MR. REYNOLDS: Yeah, I understand that,
21 but like I say, being a railroad person I can
22 understand how they're delivering it. But I say,
23 because I --

24 PRESIDING MEMBER KEESE: It's going to
25 be natural gas.

1 MR. REYNOLDS: Well, if it's going to be
2 a diesel engine --

3 PRESIDING MEMBER KEESE: No.

4 MR. REYNOLDS: Well, let me finish. I
5 understand with a diesel engines, so when it goes
6 offline there would be power to keep the power
7 going. Am I incorrect there?

8 MR. WHEATLAND: There's no backup diesel
9 engine.

10 PRESIDING MEMBER KEESE: There is no
11 backup diesel engine.

12 MR. REYNOLDS: Okay. I thank you for
13 your time anyway.

14 PRESIDING MEMBER KEESE: I think I know
15 the power plant you're thinking of, but that's not
16 this one. And that one was discontinued, also.

17 MR. REYNOLDS: Well, that's what I
18 understood when we went down there to view the
19 property, this is where I got most of my
20 information. I don't know who was there and who
21 wasn't there, but --

22 PRESIDING MEMBER KEESE: Yeah, there
23 would be some diesel in the construction
24 equipment, but that's the end of it.

25 MR. REYNOLDS: In the construction site,

1 only?

2 PRESIDING MEMBER KEESE: On the
3 construction equipment, correct.

4 MR. REYNOLDS: Yeah. I understand that.
5 But I thought there was a quote-unquote "diesel
6 engine" inside that would be say running, for
7 example, -- let me finish -- for example, runs for
8 a year, okay. Now, you have to tear that all down
9 and rebuild it while the one's being teared down,
10 you have also a backup. This is what I thought
11 that we were talking about. So I'm wrong, am I
12 correct?

13 PRESIDING MEMBER KEESE: I believe that
14 you are incorrect. And as we end here, I'm sure
15 somebody from the applicant will explain it to
16 you. They'll give you the answer.

17 MR. REYNOLDS: Okay, thank you anyhow.

18 PRESIDING MEMBER KEESE: Thank you.

19 MR. REYNOLDS: Okay, if there's any
20 questions I'd be glad to answer.

21 PRESIDING MEMBER KEESE: Okay, thank you
22 very much.

23 HEARING OFFICER FAY: Thank you. Mr.
24 Leahy, is there even the --

25 MR. LEAHY: There is a diesel fire pump.

1 HEARING OFFICER FAY: Fire pump.

2 MR. LEAHY: It's a small diesel; it's
3 only fired in the case of demand on the fire
4 system when there's no electricity available. So
5 that's the extent of it.

6 MR. WHEATLAND: But it's not used to
7 generate electricity; it's merely for backup for
8 fire-fighting purposes.

9 HEARING OFFICER FAY: And even at that,
10 just backup.

11 MR. LEAHY: Yes, that's correct.

12 HEARING OFFICER FAY: Okay. One last
13 bit of business. Ms. George asked if she could
14 have time to review and comment on the stipulation
15 regarding visual impacts.

16 Do you have any comments to give us on
17 that? You didn't mention it when you were up
18 here.

19 MS. GEORGE: My first comment has to do
20 with whether or not -- when Bechtel bailed out of
21 this project, since it's dated June 17th, but you
22 said that Bechtel is no longer part of it, did
23 they quit in the last two days?

24 HEARING OFFICER FAY: Okay, this is just
25 regarding the stipulated facts --

1 MS. GEORGE: This is right in the first
2 sentence of the stipulated facts.

3 HEARING OFFICER FAY: Right, but as
4 concerns visual impacts. Whether Bechtel --

5 MS. GEORGE: Well, this is part of the
6 stipulated facts. Is Bechtel still a part of it
7 or not?

8 MR. WHEATLAND: No, it's not. That was
9 prepared by staff and they made a mistake
10 inserting Bechtel. Bechtel is not part of this
11 project and has not been since the first of this
12 year.

13 MS. GEORGE: Okay. I note that the
14 whole purpose of the stipulation is reducing
15 hearing time, reducing or eliminating cross-
16 examination. I think that's a reduction of due
17 process.

18 The paint and strobes violate the use
19 permit of the City of Hayward currently. I don't
20 know if the staff has noted that. I think that
21 the whole issue of the paint and the strobe lights
22 has been glossed over here. I think that's going
23 to be a major impact, especially in a wildlife
24 area.

25 The staff refers to a dispute -- during

1 the testimony there was a discussion of a dispute
2 around the choice of the KOPs. I never heard what
3 point of view the staff would prefer, so that was
4 not discussed, because we stipulated instead to
5 these facts.

6 Once again, I believe the Parks sold out
7 really cheap. And gateway, I really pity the City
8 of Hayward to have a gateway of a power plant. It
9 really demonstrates the lack of clout of the City
10 of Hayward in the Bay Area. And I hope they will
11 stand up for themselves in the future and tell
12 this project to go away.

13 PRESIDING MEMBER KEESE: Thank you. And
14 as we conclude this hearing I would like to thank
15 all of the members of the public who attended
16 today, who stood in the back of the room, who
17 watched on tv.

18 I would particularly like to thank the
19 many members of the public and organizations from
20 this community who participated in the workshop
21 process, which got us to this point. The
22 workshops being the area in which we do most of
23 the work as we come towards conclusion.

24 And the fact that we were able up here
25 to handle so many issues by stipulation and

1 agreement is a result of a very effective workshop
2 process. So I thank the applicant, I thank staff
3 for helping us.

4 We're adjourned. We'll see you at the
5 next step of this process.

6 (Whereupon, at 5:30 p.m., the hearing
7 was adjourned.)

8 --o0o--

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 1st day of July, 2002.

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